[redacted]

[redacted] COURT OF THE UNITED STATES.

[redacted] TERM, [redacted] 1928.

No. [redacted]

[redacted]

[redacted] PLAINTIFF IN ERROR,

vs.

J. B. DILLS AND T. B. MATHEWS.

[redacted] THE [redacted] COURT OF THE STATE OF OKLAHOMA.

[redacted]

[redacted]

(28,827)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 872.

ELI BUNCH, PLAINTIFF IN ERROR,

vs.

J. B. COLE AND T. B. MATHEWS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

	Original.	Print.
Caption	*a*	1
Citation and service	1	1
Petition for writ of error	2	2
Assignment of errors	6	5
Order allowing writ of error	9	6
Writ of error	10	7
Bond on writ of error	12	9
Cross-petition in error	14	10
Record from the district court of Muskogee County, Oklahoma	16	12
Index	16	12
Caption	18	13
Petition	19	13
Motion to strike	24	16
Order overruling motion to strike	25	16
Answer	27	17
Amended answer	28	18
Exhibit—Agricultural lease	35	21
Reply	39	23
Stipulation as to statement of facts	40	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 1, 1922.

	Original.	Print.
Motion for judgment on pleadings	44	25
Order overruling motion	45	26
Minute entries	45	26
Testimony of Eli Bunch	52	29
J. A. Decker	60	33
Weepey Moles	66	35
D. W. Watters	74	39
Joe Moles	81	42
A. T. Ingraham	84	44
Stipulation as to statement of facts	90	47
Testimony of J. B. Cole	98	50
F. W. Keith	102	52
Lee Stanfield	104	53
J. B. Cole (recalled)	106	54
Instructions to jury	111	56
Verdict	118	58
Plaintiff's motion for new trial	119	59
Judgment	121	60
Defendants' motion for new trial	123	61
Order overruling defendants' motion for new trial	130	64
Order overruling plaintiff's motion for new trial	131	65
Supersedeas bond	133	65
Certificate of attorneys	137	67
Tender of case-made and acceptance of service	138	67
Stipulation as to case-made	140	68
Certificate of trial judge	142	69
Order overruling motion to advance in supreme court	144	70
Order advancing cause	145	70
Order of submission	146	70
Judgment	147	71
Opinion, Miller, J.	148	72
Petition for rehearing	154	77
Order extending time to file brief on rehearing	164	85
Brief in support of petition for rehearing	165	86
Order to respond to petition	173	90
Order extending time to respond	174	91
Order denying petition for rehearing	175	91
Order staying mandate	176	92
Clerk's certificate	177	92

6 *Return to Writ.*

UNITED STATES OF AMERICA, *ss:*

Supreme Court of Oklahoma.

In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix a seal of said Supreme Court of the State of Oklahoma in Oklahoma City, on this 28th day of March, 1922.

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of the State of Oklahoma,
By REUEL HASKELL, JR.,
Assistant.

1 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to J. B. Cole and T. B. Mathews, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date of service hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein Eli Bunch is Plaintiff in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against said Plaintiff in Error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oklahoma this the 15th day of March, 1922.

JNO. B. HARRISON,
Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma.
By REUEL HASKELL, JR.,
Assistant.

Filed in Supreme Court of Oklahoma Mar. 27, 1922.
WILLIAM M. FRANKLIN,
Clerk.

1½ In the Supreme Court of the United States.

ELI BUNCH, Plaintiff in Error,

vs.

J. B. COLE and T. B. MATHEWS, Defendants in Error.

We, Attorneys of Record for J. B. Cole and T. B. Mathews, Defendants in Error in the above styled cause in the Supreme Court of the United States, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States, on the 21st day of March, 1922.

W. J. CRUMP,
MYRON WHITE,
R. P. DE GRAFFENRIED,
Counsel for J. B. Cole and T. B. Mathews.

Muskogee, Okla.

Filed in Supreme Court of Oklahoma Mar. 27, 1922.
WILLIAM M. FRANKLIN,
Clerk.

2 In the Supreme Court of the United States.

No. —.

ELI BUNCH, Plaintiff in Error,

vs.

J. B. COLE and T. B. MATHEWS, Defendants in Error.

Petition for Writ of Error.

Filed in Supreme Court of Oklahoma Mar. 15, 1922. William M. Franklin, Clerk.

To the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, and the Associate Justices of said Court:

Now comes Eli Bunch, Plaintiff in Error in the above cause and Defendant in the Court below, and would show unto this Honorable Court that in the record and proceedings and rendition of the decree in the above cause by the Supreme Court of the State of Oklahoma, in the said suit between Eli Bunch and J. B. Cole and T. B. Mathews, manifest error has occurred, greatly to his damage, whereby petitioner feels aggrieved.

That in the record and proceedings, it will appear that there was drawn in question the validity of a statute and authority exercised under said State of Oklahoma on the ground of repugnancy to the

laws of the United States, and the validity of said statute and authority was upheld by the decree of the Supreme Court of Oklahoma; that the Federal question particularly involved, is as follows:

3 That the Plaintiff, Eli Bunch, was a fullblood Cherokee Indian, enrolled as such, and that there was allotted to him

The West Half (½) of the Northeast Quarter (¼) of Section Sixteen (16), Township Ten (10) North, Range Twenty(20) East in Muskogee County, Oklahoma;

that he was in the United States military service from May, 1917 to January 1st, 1919; that during the years 1917 and 1918, while he was in the United States military service, J. B. Cole and T. B. Mathews rented out his allotted land and collected for the use of said allotted land during said two years, the sum of $1,274.75; that during said time, J. B. Cole was Chairman of the Council of Defense at Porum, Oklahoma, which was an organization created to aid in carrying on the War and to look after the property of absent soldiers; that Eli Bunch brought this action against J. B. Cole and T. B. Mathews to recover for the rents so collected by them; that they set up as a defence to the action, the fact that they had taken two leases from Eli Bunch, one on July 5, 1916 for the use of his allotted land for 1917 and that they had paid Eli Bunch $75.00 thereunder, the amount specified in the lease; that they took another lease on July 28, 1917 from Mary Sunday, the mother of Eli Bunch, for the use of said allotted land for the year 1918 for which they paid her the sum of $75.00; that being the amount specified in the lease and that they occupied said land under said leases, and by virtue of the provisions of the State law, they were tenants at will and were required to pay only the rent specified in the lease; that Eli Bunch contended that such provisions of the State law were repugnant to

4 the Act of Congress approved May 27, 1908, being Chapter 199—"An Act for the Removal of restrictions from part of the land of allot-ees of the Five Civilized Tribes and for other purposes." The decision of the Supreme Court of Oklahoma, however, upheld the provisions of the State law as applied to leases by restricted Indians and held that by virtue of the provisions of the State law, J. B. Cole and T. B. Mathews became tenants at will and that the terms of the leases made by them governed as to the amount they should pay for the use of the land, and the State Supreme Court thereby held that provisions of said Act of Congress became inoperative when possession was taken under the leases prohibited by said Act, for the reason that by virtue of the State law, when possession was taken the provision of the leases made, although in violation of said Act of Congress, governed as to the liability of payment of rent. By virtue of the Statute of the United States relied upon, Eli Bunch was entitled to have said leases treated as absolute nullities and as conferring no rights upon J. B. Cole and T. B. Mathews, but the State Supreme Court held that by virtue of said laws, said leases fixed the rights of the parties and said Court

thereby held that the State laws prevail over the Statutes of the United States.

Eli Bunch further contended that by reason of the fact that he was in United States military service under the laws of the United States, J. B. Cole, who held the office of Chairman of the Council of Defence under the laws of the United States, was not entitled to make a profit of 750 per cent from renting out the land of Eli Bunch, the absent soldier. And Eli Bunch contended that by reason of the laws of the United States under which he was serving in the United States military service, he was entitled to recover a reasonable compensation from those who used his land at a time when he was prevented, by being in the United States military service, from looking after his own land and that this right arose from his being in the United States military service by virtue of the laws of the United States. This right so claimed was held by the trial court but was denied by the decision of the State Supreme Court, which thereby denied Eli Bunch a right claimed under the laws of the United States, all of which is fully apparent in the record and proceedings of the case, and specifically set forth in the Assignment of Errors filed herein.

Wherefore, Petitioner prays that his appeal be allowed and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C. under the rules of said Court in such cases made and provided, that the same may be inspected and corrected, as according to law and justice should be done.

NEFF & NEFF,
Attorneys for Eli Bunch.
NEFF & NEFF.

Writ of Error allowed as prayed for upon the giving of a bond by Eli Bunch in the sum of Two Hundred, ($200.00), Dollars.
Dated March 15, 1922.

JNO. B. HARRISON,
Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal of Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By REUEL HASKELL, JR.,
Assistant.

6 In the Supreme Court of the United States.

No. 11230.

J. B. COLE and T. B. MATHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Assignment of Errors.

Filed in Supreme Court of Oklahoma, Mar. 15, 1922. William M. Franklin, Clerk.

Now comes the Defendant in Error, Eli Bunch, in the above entitled cause, and files the following assignment of errors, upon which he will rely upon the prosecution of a writ of error in the above entitled cause to the Supreme Court of the United States from the decision and decree made by this Court on the 31st day of May, 1921, which became final on the 7th day of February, 1922 at which time the petition for re-hearing was denied:

1. The Supreme Court of the State of Oklahoma erred in directing the trial court to sustain the motion of the Defendants, J. B. Cole and T. B. Matthews, for judgment on the pleadings and stipulation of facts and render judgment in favor of the Defendants and against the Plaintiff.

2. Said Supreme Court erred in not holding that Section 3783, Oklahoma Revised Laws of 1910 as applied to leases of a fullblood Cherokee Indian of his allotted lands is repugnant to the Statutes of the United States.

3. The Supreme Court of the State of Oklahoma erred in holding and deciding that the leases taken by J. B. Cole and T. B. Mathews
7 from Eli Bunch, which were prohibited by the laws of the United States, created rights in their favor and fixed the amount which J. B. Cole and T. B. Mathews were required to pay for rent of the allotted land of Eli Bunch.

4. The Supreme Court of the State of Oklahoma erred in holding that J. B. Cole and T. B. Mathews, by taking possession of the allotted land of Eli Bunch, a fullblood Cherokee Indian, under the leases prohibited by the laws of the United States, became tenants at will by reason of the laws of the State of Oklahoma.

5. The Supreme Court of the State of Oklahoma erred in holding and deciding that by reason of the laws of the State of Oklahoma, J. B. Cole and T. B. Mathews were not liable for the rents collected from the allotted land of Eli Bunch, a fullblood Cherokee Indian, by virtue of leases prohibited by the laws of the United States.

6. The Supreme Court of the State of Oklahoma erred in not holding and deciding that the laws of the State of Oklahoma relied upon to defeat the action of the Plaintiff, Eli Bunch, were repugnant to the Statutes of the United States, making the leases relied upon in this action utterly void and prohibiting the taking of such leases.

7. The Supreme Court of the State of Oklahoma erred in holding that the Chairman of the Council of Defence at Porum, Oklahoma was entitled to retain the sum of $1,124.75 out of a total of $1,274.75 collected by renting out the land of Eli Bunch during the period he was in actual military service of the United States.

Wherefore, the Plaintiff in Error, Eli Bunch, Defendant in Error in the Supreme Court of Oklahoma, prays that said decree and decision of the Supreme Court of Oklahoma be reversed and
8 that said Court be directed to direct the trial court, being the District Court of Muskogee County, State of Oklahoma to render judgment in favor of Eli Bunch and against J. B. Cole and T. B. Mathews for the sum of $1,124.75 with interest thereon and for all proper relief.

NEFF & NEFF,
Attorneys for Eli Bunch, Plaintiff in Error.
NEFF & NEFF,
WILLIAM NEFF,
L. E. NEFF,
ROBT. M. RAINEY,
STREETER B. FLYNN,
Attorneys for Eli Bunch, Plaintiff in Error.

9 Filed in Supreme Court of Oklahoma, Mar. 15, 1922. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. —.

ELI BUNCH, Plaintiff in Error,

vs.

J. B. COLE and T. B. MATHEWS, Defendants in Error.

Order Allowing Writ of Error.

Filed in Supreme Court of Oklahoma, Mar. 15, 1922. William M. Franklin, Clerk.

On this, the 15th day of March, 1922, came on to be heard the application of Eli Bunch, Defendant in Error in Case No. 11230 pending in the Supreme Court of the State of Oklahoma, entitled J. B. Cole and T. B. Mathews, Plaintiffs in Error vs. Eli Bunch,

Defendant in Error, for a writ of Error to the Supreme Court of the United States, and it appearing to the Court from the petition filed herein and the record filed therewith that the application ought to be granted and that a transcript of the record, proceedings and papers upon which the judgment of the Supreme Court of Oklahoma was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings may be had as will be just in the premises,

It is therefore ordered that the writ of error be allowed upon Eli Bunch giving bond, conditioned as the law directs, in the sum of Two Hundred ($200.00) Dollars and that a true copy of the record, assignment of errors and all proceedings had in the case in the Supreme Court of the State of Oklahoma shall be transmitted to the Supreme Court of the United States, properly certified, as the law requires, that the Court may inspect the same and do what according to law should be done.

JNO. B. HARRISON,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal of Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By REUEL HASKELL, JR.,
Assistant.

10 *Writ of Error.*

Filed in Supreme Court of Oklahoma Mar. 15, 1922. William M. Franklin, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Eli Bunch (Defendant in Error in the Supreme Court of Oklahoma,) and J. B. Cole and T. B. Mathews (Plaintiffs in Error in the Supreme Court of Oklahoma) wherein was drawn in question the validity of a Statute of the United States, and the decision was against its validity; and wherein was drawn in question the validity of a Statute or an authority exercised under the State of Oklahoma on the ground of their being repugnant to the laws and Statutes of the United States, and the decision was in favor of their validity; and wherein it was asserted by Eli Bunch that Section 3783, Revised Laws of Oklahoma, 1910 upon which the decision in this case was

based was repugnant to the Statutes of the United States regulating the leasing of the allotments of fullblood Cherokee Indians, and it was held that said Statute of the State of Oklahoma was not repugnant to said Statutes of the United States, and the decision was in favor of the validity of said Section 3783, Revised Laws of Oklahoma, 1910. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the
11 parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the same Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 15th day of March, A. D. 1922.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the United States District Court
for the Western District of Oklahoma.

Writ Allowed this 15 day of March, 1922.

JNO. B. HARRISON,
Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma.
By REUEL HASKELL, JR.,
Asistant.

12 In the Supreme Court of the State of Oklahoma.

No. 11230.

J. B. COLE and T. B. MATHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Bond on Appeal.

Filed in Supreme Court of Oklahoma Mar. 15, 1922. William M. Franklin, Clerk.

Know all men by these presents:

That we, Eli Bunch, as principal, and the Southern Surety Company, as surety, acknowledge ourselves to be jointly indebted to J. B. Cole and T. B. Mathews, appellees in the above cause, in the sum of $200.00 condition- that,

Whereas, on the 31st day of May, 1921 in the Supreme Court of the State of Oklahoma in an appeal pending in that Court, wherein J. B. Cole and T. B. Mathews were Plaintiffs in Error and Eli Bunch was defendant in Error, numbered on the docket of said Court as No. 11,230, a decree was rendered against the said Eli Bunch and a petition for rehearing was denied on the 7th day of February, 1922, and the said Eli Bunch, having obtained a writ of error for a review of said decree by the Supreme Court of the United States,

Now, if the said Eli Bunch shall prosecute his writ of error to effect and answer all cost, if he fail to make his plea good, then the above *objection* to be void, else to remain in full force and virtue.

Dated March 13th, 1922.

ELI BUNCH,
By WILLIAM NEFF,
His Attorney,
Principal.

SOUTHERN SURETY COMPANY, [SEAL.]
By O. A. WILLS,
Vice-President.

Attest:

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By REUEL HASKELL, JR.,
Assistant.

Approved this 15th day of March, 1922.

JNO. B. HARRISON,
Chief Justice of the Oklahoma Supreme Court.

13 *Resolution.*

Resolved, that the following officers, or either of them, to-wit:

C. S. Cobb, President,
E. G. Davis, Secretary,
J. H. Huckleberry, Vice-President,
J. T. Suggs, Vice-President,
F. A. Ungles, Vice-President,
O. A. Wells, Vice-President,
D. D. Smith, Vice-President,
Roy Armstrong, Vice-President,

be and they are hereby authorized and empowered, under the corporate seal of the company, in its name and as its act, to execute and deliver any and all bonds or undertakings, and renewals or continuations thereof, and to execute any and all consents or agreements to changes or modifications of such bonds or undertakings or of contracts guaranteed thereby.

* * * * * * *

I, E. G. Davis, Secretary of Southern Surety Company, a corporation of the State of Iowa, do hereby certify that the above and foregoing is a full, true and complete copy of a Resolution, duly adopted at the meeting of the Board of Directors of said Southern Surety Company, on the 27th day of March, A. D. 1919, as the same appears of record in the minutes of said meeting.

Witness my hand and the corporate seal of said company, this 13th day of March, 1922.

E. G. DAVIS, [SEAL.]
Secretary.

X86.

14 In the Supreme Court of the State of Oklahoma.

No. 11230.

J. B. COLE and T. B. MATHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Cross-petition in Error.

Filed in Supreme Court of Oklahoma Mar. 1, 1920. William M Franklin, Clerk.

Comes now Eli Bunch, the defendant in error, and complains of J. B. Cole and T. B. Mathews, the plaintiffs in error, and for his cross-petition in error, alleges that on the 14th day of February, 1920, in an action pending in the District Court of Muskogee County,

Oklahoma, wherein Eli Bunch was plaintiff and J. B. Cole and T. B. Mathews were defendants, the defendant in error recovered a judgment against the plaintiffs in error for $407.41, when he should have recovered a judgment for $1,320.00, and that the defendant in error duly filed a motion for a new trial and for modification of said judgment, which was overruled on the 20th day of February, 1920, and that a case made showing the proceedings had in said cause is hereto annexed and made a part of this cross-petition in error, and the defendant in error avers and alleges there is error in said proceedings as follows, to-wit:

1. Said District Court of Muskogee County, Oklahoma, erred in overruling the motion of this defendant in error, who was plaintiff in said Court, for a new trial.

2. Said Court erred in denying the motion of the plaintiff in said cause for a directed verdict in his favor for the sum of $1,320.00.

3. Said Court erred in directing a verdict for the plaintiff in said cause for only $407.41.

4. Said Court erred in holding that the plaintiff was not
15 entitled to recover the 1917 rents from the land in controversy as well as the 1918 rents.

And that as the facts are not disputed and plaintiff's right of recovery involves the determination of a pure and unmixed question of law the defendant in error prays that the judgment of the Court below may be reversed and set aside and that judgment may be rendered in favor of the plaintiff in said Court for the sum of $1,320.00, with interest thereon from the date of the judgment rendered from which the appeal was taken and for such other and further relief as may be just including the costs of the appeal.

NEFF & NEFF,
Attorneys for Defendant in Error.

16 In the District Court Within and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Index to Case-made.

District Court, State of Oklahoma, County of Muskogee. Filed Feb. 25, 1920. L. D. Martin, Court Clerk.

Caption	1
Petition	2
Motion to Strike	7
Record June 30th, 1919 (Overruling Motion to Strike)	9
Answer	10
Amended Answer	11
Repl[illegible]	22
Stip[illegible]ion	23
Mot[illegible] for Judgment on Pleadings	27
Reco[illegible] (Overruling Motion for Judgment on pleadings and rec rd of trial)	28
Evidence	31
Eli Bunch Direct	36
Cross	39
Redirect	43
J. A. Decker Direct	43
Cross	47
Weepey Moles Direct	49
Cross	56
A. W. Waters Direct	57
Cross	59
A. T. Ingraham Direct	67
Plaintiff's Exhibit (Stipulation)	73
17 J. B. Cole Direct	81
F. W. Keith Direct	85
Lee Stanfield Direct	88
J. B. Cole Further Direct	89
Verdict	101
Motion for New Trial (Plaintiff)	102
Journal Entry of Judgment	104
Motion for New Trial (Defendants)	107
Order Overruling Defendants' Motion for New Trial	112
Order Overruling Plaintiff's Motion for New Trial	114
Supersedeas Bond	116
Certificates	119-126 Incl.

18 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Case-made.

Be it remembered, that on to-wit, this the 15th day of June, 1919, the plaintiff, Eli Bunch, commenced his action against the defendants, J. B. Cole and T. B. Mathews, by filing in the office of the Court Clerk, in and for the District Court, his petition, which said petition is in the words and figures following, to-wit:

19 In the District Court in and for Muskogee County, Oklahoma

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Petition.

Comes now said plaintiff and for his first cause of action against the defendants alleges and states:

1. That the plaintiff is a full blood Cherokee Indian and was enrolled as such and that he received as his homestead and surplus allotment the following described land:

The West Half of the Northeast Quarter of Section Sixteen, Township Ten North, Range Twenty East in Muskogee County, Oklahoma,

and at all the times hereinafter mentioned was the owner thereof. That in May, 1917, the plaintiff enlisted in the United States Navy and became first a seaman and then quartermaster on the battleship, Montana, which was engaged in convoying Allied and American troop ships and that plaintiff was honorably discharged on January 28th, 1919.

2. That during the times hereinafter mentioned the defendants were copartners in trade doing business under the firm name of Cole & Mathews and that in 1917 and 1918 the defendant, J. B. Cole was chairman of the Council of Defense at Porum, Oklahoma.

3. That the land above described is fine bottom land with 40 acres in cultivation and the balance in pasture, that during the years 1916, 1917 and 1918 about 27 acres of said land was in cotton crop and about 13 acres in corn each year and that the said land during the year 1917 produced about 22 bales of cotton of the value of about $3,520 and about $1,000 worth of corn, that during the year
20 1918 there was produced from said land about nine bales of cotton of the value of about $1,280.00 and about $1,000 worth of corn, that during the year 1916 the value of the crops produced from said land was about $2,000.00. That the value of the use of said pasture land during said years was about $200.00.

4. That during each of said years the defendants unlawfully used and occupied said pasture land and unlawfully and wrongfully converted said crops to their own use and benefit.

Wherefore, plaintiff prays judgment against the defendants for $200 with interest thereon for the use of said pasture land and for $2,000 with interest thereon from January 1st, 1917, for $1,520 with interest thereon from January 1st, 1918 and for $2,280 with interest thereon from January 1st, 1919.

21 For second cause of action plaintiff realleges all the matters set forth in the paragraphs designated 1, 2 and 3 in the foregoing and further alleges that in the year 1915 the defendants took a pretended lease on said land for the year 1916, but that said pretended lease was void because in violation of the statutes of the United States relating to the leasing of the allotments of full blood Cherokee Indians, that in or about June 1916 the defendants took a pretended lease upon said land for the year 1917, that in July 1917 the defendants took a pretended lease on said land for the year 1918 from the Mother of the plaintiff and in May, 1918, took a pretended lease of said land for the year 1919 from the Mother of the plaintiff but that all said pretended lease- were void because in violation of the statutes of the United States relating to the alienation of land of full blood Cherokee Indians and said leases were further void because his said Mother had no authority to make them and that said leases made by his said Mother were void for the reason that the same were made for a grossly inadequate consideration of $75.00 per year, which consideration was never paid the plaintiff, that plaintiff's mother is uneducated and does not know land or rental values and that defendants in dealing with her were under the obligation while plaintiff was in the United States Naval Service to deal fairly with her and to pay a fair and adequate consideration for the use of said land and owing to the difference in the position of the parties, the gross inadequacy of the consideration and the advantage taken, said leases were absolutely void, that in law and good conscience the defendants could not make a large profit out of their dealings with the plaintiff and his mother and the plaintiff's property during the period he was in the United States Naval Service, that upon his return the plaintiff
22 sought to obtain possession of his land, but the defendants asserted the right to the possession thereof and kept people

from renting it by telling them they had it rented and would not give possession and wholly prevented plaintiff from renting the pasture land or from obtaining an adequate rental for the other land and that defendants by means of an injunction suit to which the plaintiff was not made a party has had the lessee of plaintiff enjoined from taking possession of the land rented, that if the customary share of the crops had been turned over to the plaintiff for the years 1916, 1917 and 1918, he would have received about $2,400.00 from said land besides $225.00 for the use of the pasture and that the defendants collected and retained for themselves about that amount and in addition plaintiff has been damaged $500.00 by the unlawful withholding of said land for the year 1919, that the defendants unlawfully during each of said years sublet said land to tenants in violation of the statute and thereby forfeited their pretended leases and in April 1919 plaintiff served a ten days' notice to quit possession and plaintiff is entitled to double the value of the use of the property in addition to the detriment caused thereby, that defendants have acted wilfully, wrongfully and oppressively and plaintiff is entitled to recover exemplary damages in at least $1,000.00. That the value of the use of said land was at least the amount collected from it by the defendants and the
23 total values of the use thereof was about $2,625 during the years 1916, 1917 and 1918.

Wherefore plaintiff prays judgment against the defendants for $3,625 with interest thereon and $1,000 exemplary damages and costs.

NEFF & NEFF,
Attorneys for Plaintiff.

Lien Claimed.

24 The above and foregoing instrument is endorsed as follows:

No. 7062. District Court. Eli Bunch Plaintiff, vs. J. B. Cole et al., Defendants. Petition, District Court, State of Oklahoma, County of Muskogee. Filed Jun. 5, 1919. L. D. Martin, Court Clerk. Lien Claimed. Neff & Neff, Attorneys for Plaintiff.

That thereafter, to wit, and on the 11th day of June, 1919, the defendants by and through their attorneys of record, filed in the office of the court clerk, in and for the district court, Muskogee County, State of Oklahoma, their motion to strike, and said motion to strike is in the words and figures following, to wit:

In the District Court in and for Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Motion to Strike.

Comes now the defendants in the above entitled cause and moves the court to strike from the petition that part of said petition
25 beginning with the 10th line thereof, down to and including the 14th line thereof, because the same is irrelevant, immaterial and throws no light on plaintiff's cause of action.

2. Defendants move to strike that portion of plaintiff's petition as follows: In 1917 and 1918, defendant J. B. Cole was Chairman of the Counsel of Defense of Porum, Oklahoma, because the same is irrelevant and immaterial.

Wherefore defendants pray judgment of the court.

CRUMP & DE GRAFFENRIED,
Attorneys for Defendants.

The above and foregoing instrument is endorsed as follows:

No. 7062. Eli Bunch, Plaintiff, vs. J. B. Cole and T. B. Mathews, Defendants. Defendants' Motion to Strike. District Court, State of Oklahoma, County of Muskogee, Filed Jun. 11, 1919, L. D. Martin, Court Clerk. Neff & Neff, Att'ys for pl'ff. Crump & de Graffenreid attorneys for defendants. Mo. denied 6/30.

That thereafter to wit, and on the 30th day of June, 1919, the Court made and entered its order overruling the motion of the defendants to strike, which said order was duly spread of record upon
the journals of said court in Journal No. 17, at Page 599, and
26 is in the words and figures following, to wit:

Record of the District Court, Muskogee County, Oklahoma.

Monday, June 30th, 1919.

Court met pursuant to adjournment, presiding, the Honorable B. B. Wheeler.

Present: B. B. Wheeler, Judge, W. W. Cotton, County Attorney, J. D. Robbins, Sheriff, L. D. Martin, Court Clerk, and Clarence Thomas, Court Reporter.

Court having been opened in due form of law, the following proceedings were had, to-wit:

No. 7062.

ELIS BUNCH, Plaintiff,

vs.

J. B. COLE et al., Defendants.

Defendants' Motion to Strike.

Motion heard and denied.

(Whereupon Court adjourned until 9:00 o'clock tomorrow morning.)

That thereafter, to wit, and on the 6th day of October, 1919, the Defendants by and through their attorneys of record, filed in the office of the court clerk, their answer, which said answer, so
27 filed on said date, is in the words and figures following, to wit:

In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

COLE & MATHEWS, Defendant.

Answer.

Comes now the defendants by their attorneys, Crump & De Graffenried and for answer to the first cause of action contained in plaintiff's petition, they deny each and every allegation contained in said first cause of action.

And further answering herein the defendants deny each and every allegation contained in plaintiff's second cause of action in his said petition. Having fully answered herein, defendants pray to be discharged with their costs.

CRUMP & DE GRAFFENRIED,
Attorneys for Defendants.

Permission given to file above answer on this 6th day of October, 1919.

BENJAMIN B. WHEELER,
Judge.

28 The above and foregoing instrument is endorsed as follows:

In the District Court, Muskogee County, Oklahoma. Eli Bunch, Plaintiff, vs. Cole & Mathews, Defendants. No. 7062. Answer. District Court, State of Oklahoma, County of Muskogee. Filed Oct. 6, 1919. L. D. Martin, Court Clerk. Crump & de Graffenried, Attys. for Defts.

That thereafter to wit, on the 10th day of October, 1919, the defendants, by and through their attorneys of record, filed in the office of the Court Clerk, their amended answer, which answer, so amended and so filed on said date, is in the words and figures following, to wit:

In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Doing Business under the Partnership Name of Cole & Mathews, Defendants.

Amended Answer.

Comes now the defendants in the above entitled cause, leave of the Court being first had and obtained for that purpose, and amend their original answer filed and in lieu thereof, submit the
29 following as a substitute.

The defendants for answer to the first cause of action contained in the plaintiff's petition denies each and singular all the allegations contained in said count and demand strict proof of the same.

Further answering herein, these defendants admit that they used and occupied the land described in plaintiff's petition during the year 1916. The Defendants say they occupied and used said land under and by virtue of a written contract entered into between the plaintiff and defendants whereby the plaintiff let and leased said premises to these defendants on the 4th day of October, 1915 for the year 1916 to begin the first day of January 1916 and to end on the 31st day of December 1916. Whereby these defendants paid to the plaintiff the sum of Seventy five ($75.00) dollars as a consideration for said lease. That the plaintiff accepted the said sum of Seventy five ($75.00) dollars in full consideration and payment for the use and occupation of said premises for the year 1916. A copy of said lease being hereto attached and made a part hereof.

Defendants further answering herein admit they used and
30 occupied said premises described in the petition during the year 1917 and allege that they occupied same under and by virtue of a written lease contract executed by the plaintiff to these

defendants on the 5th day of July, 1916 for a consideration of Seventy five ($75.00) dollars.

Defendants further allege that said sum of Seventy five ($75.00) dollars was accepted by the plaintiff in full satisfaction and payment for the use and occupation of premises for the year 1917. A copy of said lease cannot be attached hereto for the reason that the original is lost or destroyed.

Defendants further answering herein admit that they occupied and used said premises described in the petition during the year 1918 and allege that the plaintiff went to the War in 1917, in the early part thereof and left his farm which is described in plaintiff's petition in the possession of his Mother, Mary Sunday, with full authority to lease and rent the same during his absence in the war. That on the 28th day of July, 1918, the said Mary Sunday, acting as the agent and for the use and benefit of the said plaintiff, Eli Bunch, entered into a contract by which she leased and let said premises by written agreement to these defendant- for the year 1918. That by the terms of said written contract made with the said
31 Mary Sunday as the agent of the plaintiff, these defendants agreed and promised to pay the said Mary Sunday as such agent the sum of Seventy five ($75.00) dollars for the use and occupation of said land and that they did pay said Seventy five ($75.00) dollars to the said Mary Sunday as the agent and representative of the plaintiff and that said sum of Seventy five ($75.00) dollars was accepted by the said Mary Sunday as the agent of the said plaintiff in full satisfaction and payment for the use and occupation of said land during the year 1918. Whereby these defendants contend and claim and assert they were in legal possession of the land above mentioned in plaintiff's petition during the three years of 1916, 1917 and 1918. A copy of last mentioned lease cannot be attached because original is lost.

As a further defense to plaintiff's cause of action in the said count, these defendants say that in the event for any reason the above described written leases should be held void by the Court, then and in that event these defendants assert and claim that they were the tenants at will of the plaintiff for the three years above mentioned and that they paid him the full consideration for the use and occupation of said land, to wit: for the year 1916, the sum of Sev-
32 enty five ($75.00) dollars; for the year 1917, the sum of Seventy five ($75.00) dollars; for the year 1918, the sum of Seventy five ($75.00) dollars and that the plaintiff accepted said sums of money in full payment and satisfaction for the use and occupation of said land for said three years.

Having fully answered the first cause of action, the defendants pray that they be discharged with their costs.

The defendants for answer to the second cause of action contained in plaintiff's petition deny each and every allegation contained in said second cause of action and demand strict proof of same.

Further answering herein, these defendants admit that they used and occupied the premises described in plaintiff's petition during the year 1916 and allege that they occupied and used said premises under

and by virtue of a written contract entered into by Eli Bunch, the plaintiff and these defendants on the 4th day of October, 1915, whereby the plaintiff let and leased all the premises described in his petition to these defendants for the year 1916 for the consideration of Seventy five ($75.00) dollars; that these defendants paid to the plaintiff the said sum of Seventy five ($75.00) dollars for the
33 execution of said lease and for the use and occupation of said premises which said sum of money the plaintiff accepted in full payment and satisfaction for the use and occupation of said land for the year 1916.

The defendants further answering herein admit that they occupied and used the land described in plaintiff's petition during the year 1917 and allege that they occupied and used said land under and by virtue of a written contract executed and entered into on the 5th day of July, 1916 with the plaintiff, Eli Bunch, whereby the said Eli Bunch, let and leased said land to these defendants for the year 1917 for cash consideration of Seventy Five ($75.00) dollars; that these defendants paid unto the said Eli Bunch the said sum of Seventy five ($75.00) dollars for the use and occupation of said land for the year 1917 and that the said Eli Bunch accepted said sum of Seventy five ($75.00) in full payment and satisfaction for the use and occupation of said land during the year 1917.

Further answering herein, these defendants admit that they used and occupied the land described in plaintiff's petition during the year 1918 and allege and assert that the use and occupation thereof was under a contract duly entered into by and between Mary Sunday, the mother of the plaintiff, and these defendants and defend-
34 ants allege that when this plaintiff entered the army in the early part of 1917, he made, constituted and appointed the said Mary Sunday, his Mother, as his duly authorized agent to handle, lease, let and rent the said land for him and in his stead during the time that he was engaged in the war and further answering allege that said contract made with the said Mary Sunday on July 28th, 1917 was made with the said Mary Sunday as the agent duly authorized and empowered by the plaintiff to execute the same and that for the terms of said lease the said Mary Sunday as the agent of the said plaintiff rented and leased the said land to these defendants for the year 1918 for the sum of Seventy five ($75.00) dollars, cash to her in hand paid; that said sum of Seventy five ($75.00) dollars was paid by these defendants to the said Mary Sunday as the agent of plaintiff and that as such agent she accepted the same in full satisfaction for the use and occupation of said premises for the year 1918. Whereby these defendants contend and allege that they were in the full and lawful possession of said land during the years 1916, 1917 and 1918 under and by virtue of the allege- written contracts as above set out.

35 These defendants further allege that in the event, if for any reason, the Court should hold or decide that any of the above written contracts as set out, are void, then and in that event, these defendants assert and allege that they used and occupied the said land for the years above mentioned as tenants at will of the plaintiff

and that they have paid the plaintiff in full for the use and occupation of said land for said three years as above set forth and that the plaintiff has accepted the same in full satisfaction for the use and occupation of same.

Wherefore, these defendants having fully answered both counts of plaintiff's petition and having fully answered said petition in full, these defendants pray that they be discharged with their cost.

CRUMP & DE GRAFFENRIED,
Attorneys for Defendants.

96107.

Agricultural Lease.

This lease, Made and entered into this 4th day of October 1915, by and between Eli Bunch of Porum, State of Okla., hereinafter called the lessor, and J. B. Cole and T. B. Mathews of Porum, State of Okla., hereinafter called the lessee, witnesseth:

36 1. That the lessor owns the following described real estate and premises, situate in Muskogee County, Oklahoma, to-wit:

The West Half (½) of the North east Quarter (¼) in Section Sixteen (16) Township Ten (10) Range Twenty (20) East.

2. That the lessor, in consideration of the covenants, promises and agreements herein contained and expressed, hereby rents, leases, and lets to the lessee the above described premises, to have and to hold the same from the First day of January, 1916, together with the buildings and improvements thereon, for agricultural purposes for Term of One year ending Dec. 31, 1916.

3. That the lessor covenants to place the lessee in the quiet and peaceable possession of said premises on or before the beginning of the term covered by this lease, and to protect the lessee in the quiet and peaceable possession of said premises during the term of this lease.

4. That the lessee promises and agrees to pay the lessor as rental for said premises for said term, the sum of Seventy-five dollars, payable as follows: Paid in hand this being the receipt for same.

5. That no part of said rent money shall be due or payable until the lessee shall have been placed in the quiet and actual pos-
37 session of said premises.

6. That —.

Signed and delivered on the day and date first herein written.

ELI BUNCH. [SEAL.]

(Acknowledgment.)

STATE OF OKLAHOMA,
Muskogee County, ss:

Before me, the undersigned Notary Public in and for said County and State, on the 4 day of October, 1915, personally appeared Ely Bunch to me well known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

[Seal Geo. M. Neal, Notary Public, Muskogee County, Okla.]

GEO. M. NEAL,
Notary Public.

My commission expires 11-14-1917.

Filed for record on the 5th day of October, 1915, at 8 o'clock A. M.

C. H. EBERLE, [SEAL.]
County Clerk.

Certificate of True Copy.

STATE OF OKLAHOMA,
County of Muskogee, ss:

38 I, Lewis E. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain instrument as the same appears on file, of record in my office, in Book 275 at Page 697.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of this office on this 9th day of Oct. 1919.

[SEAL.] LEWIS F. KIPP,
County Clerk.
By SPRAY HIKENS,
Deputy.

The above and foregoing instrument is endorsed as follows: #7062. In the Dist. Court. Eli Bunch, vs. Cole & Mathews, No. 7062, Amended answer. District Court, State of Oklahoma, County of Muskogee, ss. Filed Oct. 10, 1919. L. D. Martin, County Clerk. Permission is granted to file this amended answer. Benjamin B. Wheeler, Dist. Judge.

That thereafter, to wit, and on the 25th day of October, 1919, the plaintiff by and through his attorneys of record, filed in the office of the court clerk, his reply, which said reply, so filed on said date, is in the words and figures following, to wit:

39 In the District Court in and for Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Reply.

Comes now said plaintiff and for reply to the answer of the defendants denies each and every allegation of new matter therein contained and specifically denies that his Mother, Mary Sunday, was his duly authorized agent and for further reply alleges that the pretended leases set up in said answer were void for all the reasons alleged in plaintiff's petition.

NEFF & NEFF,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Muskogee County, ss:

Eli Bunch, being duly sworn, says, he is the plaintiff in this action and that the denials contained in the foregoing reply are true.

ELI BUNCH.

Subscribed and sworn to before me this 6th day of November, 1919.

[SEAL.]

L. D. MARTIN,
Court Clerk,
By TOM L. FULLER,
Deputy.

40 The above and foregoing instrument is endorsed as follows: No. 7062. District Court, Eli Bunch vs. J. B. Cole et al. Reply. District Court, State of Oklahoma, County of Muskogee, filed Oct. 25, 1919, L. D. Martin, Court clerk.

That thereafter, to wit, and on the 12th day of February, 1920, there was filed in the office of the court clerk, a stipulation, which said stipulation so filed on said date, is in the words and figures, following, to wit:

In the District Court in and for Muskogee County and State of Oklahoma.

Number 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Stipulation.

It is hereby agreed by and between the plaintiff by his attorneys, Messrs. Neff & Neff and the defendants by their attorneys, Messrs. Crump, de Graffenried & White that the following state-
41 ment of facts are agreed to and may be offered in evidence in this case:

First. That the plaintiff, Eli Bunch, is a Full Blood, Cherokee Indian enrolled and recognized as such.

Second. That he is the allottee of the land described in plaintiff's petition and is now and has been the legal owner thereof.

Third. That during the year 1915 the plaintiff rented said land to the defendants for agricultural purposes by written contract for one year and by the terms of which the defendants were to pay the plaintiff $75.00 for the use and occupancy of the said land for the year of 1916, and that said sum was fully paid by the defendants in cash and accepted by the plaintiff in full satisfaction for the rent of said land for the year of 1916. That said contract was dated and executed on October 4th, 1915, for the use of said land for the year of 1915 and that these defendants used and occupied said land under said written contract.

Fourth. That during the year of 1916, to-wit; on July 5th, 1916, the plaintiff again *re* rented said land to these defendants for the year of 1917 by written contract executed on said date and by the terms of which these defendants were to use and occupy said land during the year of 1917 for a cash rental of $75.00 which
42 said sum was then and there paid by defendant and accepted by the plaintiff in full for the use and occupation of said premises for the year of 1917 and that defendants occupied said land during the year of 1917 as tenants of plaintiff under said contract.

Fifth. That during the year of 1917 the plaintiff became a Soldier of the United States Government and was enlisted in the Navy during said year he was stationed at New York under the control of the Government and that while in New York these defendants by J. B. Cole wrote to the said plaintiff in regard to leasing the land for the year of 1918 and asked for a rental contract on

same and that the plaintiff Eli Bunch in reply to this letter advised the defendants that he had left his allotment in charge of Mary Sunday, his mother, and that they must go to see her in regard to renting it. And thereafter, to-wit, on July 28th, 1917 these defendants went to see Mary Sunday, the mother of the plaintiff in regard to the renting of said land and thereupon the said Mary Sunday as the agent of the plaintiff Eli Bunch, entered into a written contract as such agent with these defendants by the terms of which written contract she let and rented to these two defendants the said allotment of land for the year of 1918 for a cash consideration of $75.00 and that these defendants used and occupied said land
43 during the year of 1918 under said written contract entered into with Mary Sunday as the agent of the plaintiff. And it is further agreed this *this* stipulation may be regarded as part of the pleadings for the purpose of motion on judgment on the pleadings.

NEFF & NEFF,
Attorneys for Plaintiff.
CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

The above and foregoing instrument is endorsed as follows:

7062. Eli Bunch vs. Cole and Mathews. Agreement of facts. District Court. State of Oklahoma, County of Muskogee, ss. Filed Feb. 12, 1920. L. D. Martin, Court Clerk.

That thereafter to wit, and on the 12th day of —, 1920, the defendants by and through their attorneys of record, filed in the office of the court clerk, a motion for judgment on the pleadings, which said motion for judgment on the pleadings, so filed on said date, is in the words and figures, following to wit:

44 In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Motion for Judgment on Pleadings.

Comes now the defendants and moves the Court to grant them a judgment on the pleadings together with the stipulation of facts filed herein and of this they pray judgment of the court.

CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

Minnesota State Library

The above and foregoing instrument is endorsed as follows:

No. 7062. In the District Court of Muskogee County, State of Oklahoma. Eli Bunch, Plaintiff, vs. J. B. Cole and T. B. Mathews, Defendants. Motion for judgment on pleadings. Filed in open court this 12th day of Feb. 1920. L. D. Martin, Court Clerk, by J. A. Staley, Dep. District Court. State of Oklahoma, County of Muskogee, ss. Filed Feb. 12, 1920. L. D. Martin, Court Clerk. Crump, de Graffenried & White, Attorneys for Defendants. M. O. O. R.

45 That thereafter, to wit, and on the 14th day of February, 1920, the court made and entered its order overruling the motion for judgment on the pleadings, filed by the defendants herein, which said order was duly spread of record upon the journals of said court, in journal number 18 and page 375 and is in the words and figures, following, to wit:

Record of District Court, Muskogee County, Oklahoma.

Saturday, February 14th, 1920.

Court met pursuant to adjournment, presiding, the Honorable B. B. Wheeler.

Present: B. B. Wheeler, Judge, W. W. Cotton, County Attorney, J. D. Robbins, Sheriff, L. D. Martin, Court Clerk, and Clarence Thomas, Court Reporter.

Court having been opened in due form of law, the following proceedings were had, to wit:

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

This cause, coming on to be heard in its regular order, defendants' motion for judgment on the pleadings, filed, heard and overruled.

Defendants except to the court's order overruling said motion and in open court give notice of appeal to the Supreme Court of this State.

46 The cause now goes to trial, the plaintiff is present in person, and by his attorneys, William Neff, Harry Davis, the defendants are present by J. B. Cole and their attorneys, Judge de Graffenried and Myron White.

The following named jurors were duly empaneled, chosen and sworn:

W. J. Pack, W. L. Lindhard, H. G. Weaver, Geo. H. Walker, J. C. Rifenbery, Andrew Watterson, E. B. Caughenour, R. L. Nay, W. R. Shirley, Jim Weatherford, E. H. Leroux, Jeff J. Kerr.

Witnesses sworn, the rule asked, plaintiff introduces his testimony and rests, defendants begin the introduction of their evidence and rests. Both sides rest.

The Jury returns the following instructed verdict: We, the Jury, in the above entitled action, duly empaneled and sworn, upon our oaths, and as instructed by the court, find the issues in favor of the plaintiff in the sum of $407.41, being the value of one-fourth of the cotton and one-third of the corn raised on said plaintiff's land for the year 1918 and interest thereon.

H. G. WEAVER,
Foreman.

The court then discharged the jury from further considera-
47 tion of the case.

Whereupon court adjourned until 9 o'clock Monday morning.

48 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Evidence.

Be it remembered that on to wit, this the 14th day of February, 1920, said day being one of the regular judicial days of the regular February, 1920, term of the District Court, in and for said county and state, the above entitled and numbered cause came regularly on for trial before the Honorable Benjamin B. Wheeler, one of the District Judges, in and for said county and state, and a jury, the plaintiff appearing in person and by his attorneys of record, Neff & Neff and Harry Davis, and the defendants appearing by their attorneys of record, Crump, de Graffenried & White, their attorneys, all parties having announced ready for trial, whereupon the following proceedings were had and done and the following evidence offered and introduced, to wit:

(Whereupon a jury is called, examined and sworn to try this cause.)

(Whereupon opening statement was made to the court and jury by Mr. Neff on behalf of the plaintiff, during which state-
49 ment the following objection was made by the attorneys for the defendants.)

By Mr. Neff: And that he collected the rents and that they were collected by the Chairman of the Council of Defense, who should be

looking after the interests of the Soldiers who were away at the front.

By Mr. de Graffenried: We object to that statement.

By the Court: Objection overruled, the court might state right here——

By Mr. de Graffenried: The defendants except.

By the Court: —That the court considers this case one that is peculiar in its nature and if the proof is made as claimed by the plaintiff, then the court's rulings upon this case will be based upon the peculiar facts in this case and not upon similar facts or similar relationships rather between two parties in ordinary times and under ordinary circumstances, the court feels, or being of the opinion that this case is surrounded by particularly peculiar and unusual
50 circumstances and conditions and the court is making this statement at this time in order that the record may show the reason for the ruling of the court as the case proceeds.

By Mr. de Graffenried: We want to save an exception.

By the Court: The Defendants except to the statement of the court and the exceptions are noted in the record.

(Whereupon opening statement is made to the court and jury by Mr. de Graffenried for the defendants.)

By Mr. de Graffenried: As stated by Mr. Neff, in 1915 this defendant—and you will see him when he comes on the stand, an intelligent, educated man capable of transacting business between mankind without any limitations and the courts of the United States permit these full blood indians to lease their land, but, unfortunately for Mr. Cole and Mr. Mathews the rental contract was made in 1915 to begin in 1916, and that, the courts denounce as a violation of the law, you can't make a rental contract before the time it be-
51 gins—for that technical reason that contract is declared to be void, now he entered into that contract, Cole and Mathews paid him a cash rental for the year 1916, which he accepted and was satisfied with that sum as full payment for that lease, the same thing occurred in 1916 and in 1917 he made the contract himself—in 1917 as stated by Mr. Neff this boy got caught in the war and was sent over or he was on his way and after he left—the agreed statement of facts will show that sometime during 1917 Mr. Cole while he was stationed in New York, wrote to him renting this land for the year 1918 and he wrote in answer to that letter that that land was in charge of his mother. And under that letter Mr. Cole did go and see his mother and he entered into a rental contract, a written contract in the year of 1918, for the rental of $75.00 cash, which was paid her as the agent of this boy, Mr. Bunch was always satisfied, so far as the evidence will show in this case, with that, still Mr. Neff brought this suit, he has collected his rents and was satis-
52 fied. Now Gentlemen of the Jury, this is a suit, not only to make him pay the second time the entire crop gathered off of that place in addition to $75.00 and which he paid. Now we will introduce evidence to you here gentlemen which will show you

that this land in that neighborhood has a cash rental value for the year of 1917 and 18—we will show you—will show this to you by farmers and by the defendant Cole, who is a large land owner, that this land is subject to overflow and that only part of it was—there is only forty acres in controversy—one part of it is sandy and subject to drouth—we will show that this land has a cash rental value of $2.00 per acre—in that neighborhood, now we will ask you on our part to find a true verdict for the value of that land (Leased) as between man and man and then deduct from that amount the amount already paid by Cole and Mathews of $150.00 and we believe that you will do that.

Whereupon ELI BUNCH, a witness called for and on his own behalf, having been first duly sworn, according to law, took
53 the witness stand and testified as follows:

Direct examination of Eli Bunch by Mr. Neff.

By Mr. Neff:

Q. What is your name?
A. Eli Bunch.
Q. Where were you in the latter part of 1916?
A. I was home the latter part of the year and stayed home about a month.
Q. Did you go away to school?
A. Yes sir.

By Mr. de Graffenried: Now I would like to suggest that we will offer in evidence to the jury the agreed statement of facts, if Mr. Neff don't offer it.
By the Court: All right.

By Mr. Neff:

Q. Did you go away to school Eli?
A. Yes sir.
Q. Where?
A. I went to Chilocco.
Q. Then in the spring of 1917 what did you do?
A. I went in the service in the Navy at that time.
Q. Were you drafted, or did you volunteer?
A. I volunteered.
54 Q. What time of the year?
A. That was along early in May.
Q. Early in May?
A. Yes sir.
Q. Now what battleship did you go off on——

By Mr. de Graffenried: The defendant objects because it is immaterial in this case, we will admit he enlisted in the army, that he went to the army.

By the Court: Sustained, I don't think it makes any difference what battleship he went on, he was in the service,—that is admitted.

By Mr. Neff:

Q. What part of the service were you in,—active service, or some office position?
A. I was in active service.
Q. On the land or sea?
A. On the sea.
Q. Where were you in the year 1918?
A. In 1918 I was around the west coast of Europe, patrolling.
Q. The west coast of Europe?
A. Yes sir.
Q. What were you doing there?
A. Patrolling and convoying.
55 Q. What do you mean by patrolling and convoying?

By Mr. de Graffenried: We object, incompetent, irrelevant and immaterial, what he was doing—the question is, was he in the service.
By the Court: Sustained.
By Mr. Neff: Well, we will save an exception.

Q. Now when did you return to Porum?
A. Returned to Porum in 1918—the latter part of the year.
Q. On a furlough?
A. Yes sir.
Q. When were you discharged from Military Service?
A. In January, 1919.
Q. Now then, you are a full blooded Indian aren't you?
A. Yes sir.
Q. Cherokee?
A. Yes sir.
Q. Your restrictions have never been removed?
A. No sir.
Q. And your land is your allotment—your homestead?
A. Yes sir.
Q. Now your mother, who made the lease, is she a full blood Cherokee?
A. Yes sir.
56 Q. Does she speak English?
A. Speaks very little English.
Q. What is her acquaintance with land values, if anything?
A. I don't think she has—she is not very far advanced along the line of business transaction.
Q. Where is that land located, Eli?
A. About four miles from Porum—better than four miles.
Q. On the river?
A. Canadian river.
Q. Cross examine?

Cross-examination of Eli Bunch by Mr. de Graffenried.

By Mr. de Graffenried:

Q. Mr. Bunch, how much of this land have you in cultivation?
A. About forty acres.
Q. The rest of it is woods and pasture?
A. Yes sir.
Q. Is the cultivated land homesteaded or surplus?
A. The surplus is the cultivated land.
Q. The surplus is the cultivated land?
A. Yes sir.
Q. Your homestead is in the wood and pasture?
A. Yes sir.
57 Q. Mr. Bunch, how much have you been to school?
A. What do you mean?
Q. Well are you pretty well educated?
A. No sir.
Q. You have been off to school?
A. I have only had seven years in school.
Q. Seven years?
A. Yes sir.
Q. Where did you have that?
A. Why,——
Q. Where?
A. At Chilocco.
Q. Where is that?
A. Chilocco is seven miles and a half south of Arkansas City, Kansas.
Q. You have been there seven years and a half?
A. Yes sir.
Q. Did you ever go to a country school here in this state or territory?
A. Yes sir.
Q. Indian school?
A. I went to country school about two sessions before I went to Indian school.
58 Q. You are what we call a pretty well educated Indian aren't you?
A. No, not on the average of Indians today.
Q. What?
A. No sir.
Q. You have had considerable experience around the world haven't you?
A. Yes.
Q. Mr. Bunch, isn't it a fact that Mr. Cole and Mr. Mathews paid you $75.00 in cash for this land for 1917—16 isn't it?

By Mr. Neff: We object to that as immaterial.
By the Court: What is the purpose of that.
By Mr. de Graffenried: I just want to show that his experience,

that he was willing to rent this land and did rent it and that was a fair consideration.

By Mr. Neff: That is not cross examination.

By Mr. de Graffenried: It is cross examination, that he considered it as a fair consideration for this land.

By the Court: What direct testimony is this based upon.

By Mr. de Graffenried: On the agreed statement of facts.

59 By the Court: That is not in testimony——

By Mr. de Graffenried: We except.

By the Court: It is not proper cross examination.

By Mr. de Graffenried:

Q. You accepted the rent for 1917, did you not?

By Mr. Neff: We object to that, as not proper cross examination.

By the Court: Sustained.

By Mr. de Graffenried: We except.

By Mr. de Graffenried:

Q. You rented that land yourself for 1917, didn't you? And 16?

By Mr. Neff: We object as not proper cross examination.

By the Court: It is agreed that he rented the land for——

By Mr. de Graffenried: I want to show that he did it himself.

By the Court: Well it is agreed that the defendant did it himself, or that he did it himself.

By Mr. de Graffenried: I want to show further that the consideration was a fair rental value.

60 By the Court: That is not proper cross examination.

By Mr. de Graffenried: We except—that is all.

Redirect examination of Eli Bunch by Mr. Neff.

By Mr. Neff:

Q. Did you make an effort to serve a subpœnae on Joe Moles?
A. Yes sir.
Q. Did you find him?
A. No sir.
Q. Is he in this county?
A. No sir.
Q. He testified in the former trial?
A. Yes sir.
Q. That is all?

By Mr. de Graffenried: That is all.

(Witness excused.)

Whereupon J. A. DECKER, a witness called for and on behalf of the plaintiff, having been first duly sworn, according to law, took the witness stand and testified as follows:

Direct examination of J. A. Decker by Mr. Neff.

By Mr. Neff:

Q. What is your name?
A. J. A. Decker.
61 Q. Where do you live?
A. Near Porum.
Q. What is your occupation?
A. Farmer.
Q. Are you acquainted with the Eli Bunch allotment?
A. Sir.
Q. Are you acquainted with the Eli Bunch allotment?
A. Yes sir.
Q. Did you know that allotment in the year 1917?
A. Yes sir.
Q. What kind of land was it?
A. It was bottom land—pretty fair land.
Q. Along the Canadian river?
A. How long.
Q. Is it along the Canadian river?
A. Yes sir, right on the banks of the Canadian.
Q. Now then in 1917, did you have a farm there?
A. Yes sir, and I helped farm it in 1917.
Q. Mr. Decker, do you know what is the usual and customary way of renting land in that community during the year 1917?
A. Yes sir. One-third and one-fourth.
Q. Now what do you mean by one-third and one-fourth?
A. One-third of the corn and one-fourth of the cotton.
62 Q. They went to the landlord?
A. Yes sir.
Q. For the land?
A. Yes sir.
Q. That was the customary way of renting land—now then what did you do to the land in 1917?
A. We raised cotton on part of it and part of it was corn on it.
Q. Now what did you have to do with raising the cotton?
A. I helped cultivate it—I was just only working by day's work.
Q. What did you have to do with the picking of it?
A. I helped pick it.
Q. Now how many rows was there?
A. There was two hundred and twenty four rows on the Eli Bunch land.
Q. Now in connection with the picking of the cotton was the cotton weighed?
A. Yes sir.

Q. Now do you know how much each row made of seed cotton?
A. Well——

By Mr. de Graffenried: The defendants object to this line of testimony and contend that the measure of damages—the true
63 measure of damage is the cash rental value of the land——
By the Court: Overruled.
By Mr. de Graffenried: We except.

By Mr. Neff:

Q. Give the number of pounds of seed coton?
A. Well they didn't all make the same—it run anywhere from a hundred and twenty-five to a hundred and fifty pounds to the row.
Q. Now what was the average?
A. I should judge about a hundred and thirty or a hundred and thirty-five—there was some rows that would make a hundred and fifty, but I don't remember of a row that went under a hundred and twenty-five.
Q. Did you see the corn there?
A. Yes sir.
Q. What kind of corn was it?
A. It was fairly good corn—I didn't help gather the corn.
Q. You don't know the amount of that?
A. No sir.
Q. Do you know how many rows of cotton there were in 1918?
A. The same amount—two a hundred and twenty-four.
Q. How about the cotton grade in 1917?
64 A. How did it grade?
Q. Yes.
A. It was a good grade of cotton in 1917.
Q. Do you know what time you picked it?
A. It was sometime, something after October——
Q. Do you know when the last was marketed?
A. Yes sir, just a few days before Christmas—just a short time before Christmas.
Q. Cross examine?

Cross-examination of Mr. Decker by Mr. de Graffenried.

By Mr. de Graffenried:

Q. Do you know what those rows made in 1918?
A. No sir, I didn't, I helped pick it, but there was part of it good cotton, that burned very bad in 1918.
Q. You say it burned bad?
A. Yes sir, dry weather, it was a poor crop in 1918, there was a part of it, the low part, that was good cotton, and then on the ridges it was—you might say burned up almost.
Q. How about the corn in 1918?
A. The corn was just fair, it wasn't as good as it was in 1917.
Q. A poor crop of corn in 1918?

65 A. Yes sir.

Q. That is all—wait a minute, do you know of anybody renting land in that neighborhood at a cash rental value?

A. No, not down in that part—I do on the prairie, but not down in the bottom, I don't know of anybody renting it for cash in the bottom.

Q. Is it as good land as the land right around it on the outside?

A. Well I don't believe it is hardly as good land as the land just across the line—I don't believe it is as good hardly—it won't stand a drouth as good.

Q. Isn't it subject to overflow?

A. Well it hasn't overflowed since I have been in this country—nine years.

Q. That is all.

By Mr. Neff:

Q. Do you know the price cotton sold for at the time the cotton was marketed, in 1917?

A. Well, no I don't—I didn't raise no cotton—I could not say what.

Q. Al-right, that is all

By Mr. de Graffenried: That is all.

(Witness excused.)

66 Whereupon WEEPEY MOLES, a witness called for and on behalf of the plaintiff, having been first sworn according to law, took the witness stand and testified as follows:

Direct examination of Weepey Moles by Mr. Neff.

By Mr. Neff:

Q. What is your name?
A. Weepey Moles.
Q. Where do you live?
A. Near Porum.
Q. What is your occupation?
A. Farming.
Q. Are you familiar with and also farmed the land—the Eli Bunch allotment during the year 1917?
A. Yes sir.
Q. Who farmed that allotment?
A. Well——
Q. Yourself?
A. Me and my brother.
Q. Your brother's name is what?
A. Joe Moles.
Q. Who did you rent it from?

A. Mr. Cole.
Q. One of the defendants here?
A. Yes, sir.
67 Q. A member of the firm of Cole and Mathews, at Porum?
A. Yes sir.
Q. Now then, how much was in cotton in 1917—one question before I get to that—on what terms did you rent it in 1917?
A. One-third——

By Mr. de Graffenried: We object to that.
By the Court: Overruled.
By Mr. de Graffenried: We except.

By Mr. Neff:

Q. What terms?
A. One third and one fourth.
Q. One third of the corn?
A. Yes sir.
Q. One fourth of the cotton?
A. Yes sir.
Q. Do you know what the customary way of renting land in that community was in 1917 and 18?
A. One third and one fourth.
Q. That is the share that went to the owner of the land?
A. Yes sir.
Q. Now then, how much cotton did you revise on that land in 1917—that is, how many rows of cotton, do you know?
68 A. Two hundred and twenty-four rows.
Q. Do you know how many acres was in cotton?
A. About twenty-six acres, I guess.
Q. About twenty six acres?
A. Yes sir.
Q. Now what did that cotton yield per row, of seed cotton?
A. A hundred and thirty pounds.
Q. A hundred and thirty pounds?—Now then, when did you commence marketing?
A. The 20th of October.
Q. And when did you finish?
A. Just before Christmas.
Q. Did you turn over a part of the proceeds of the cotton to the defendant, Mr. Cole?
A. Yes sir.
Q. What share?
A. One fourth.
Q. One fourth?
A. Yes sir.
Q. What price did that cotton bring per pound—seed cotton?

By Mr. de Graffenried: We object to the question.
69 By the Court: Overruled.
My Mr. de Graffenried: Exception.

By Mr. Neff:

Q. What was the price per pound?
A. Ten and a half cents.
Q. That is seed cotton?
A. Yes sir.
Q. Now then, how much corn did you raise that year?
A. Thirty five bushels to the acre.
Q. How many acres?
A. Nine acres.
Q. Now did you turn over a share of the corn to Mr. Cole?
A. Yes sir.
Q. What share?
A. One third.
Q. When did you deliver the corn?
A. I believe it was about January.
Q. About January?
A. Yes sir.
Q. What was the market price of corn?
A. About a Dollar twenty, I believe.
Q. A Dollar twenty—now then, coming to 1918, Mr. Moles, did you farm the Eli Bunch allotment together or separate?
A. We farmed it separate.
70 Q. How many acres of cotton did you raise?
A. Six acres.
Q. How many acres did Joe Moles raise?
A. About fifteen acres.
Q. About fifteen?
A. Yes sir.
Q. And you had six?
Q. How much cotton—how many pounds of seed cotton was raised on that six acres?
A. Six thousand pounds.
Q. What time of the year did you market that?
A. It was in October.
Q. October?
A. Yes, sir.
Q. Did you turn any over to Mr. Cole?
A. Sir?
Q. Did you turn a share of the proceeds of that to Mr. Cole?
A. Yes sir.
Q. What share?
A. One fourth.
Q. What was the market price of cotton at that time? Of seed cotton?
71 A. Eleven and a half cents.
Q. Now how much corn did you raise on the Eli Bunch allotment?
A. I only had five acres.
Q. How many bushels per acre?
A. About twenty-five bushels.

Q. So the corn wasn't as good as it was in 1917?
A. No sir.
Q. Did you turn a share of that corn to Mr. Cole?
A. Yes sir.
Q. What share?
A. One-third.
Q. What was the market price of corn at that time?
A. A Dollar ten.
Q. A Dollar ten—what time of the year did you deliver the corn?
A. In November.
Q. In November?
A. The last, I think of that year.
Q. How much cotton—about how much cotton did Joe Moles raise on his 17 acres?

By Mr. de Graffenried: We will object to his telling what Joe Moles raised.
By the Court: Overruled.
By Mr. de Graffenried: Exceptions.

72 By Mr. Neff:

Q. Just go ahead?
A. About five bales.
Q. About five bales?
A. Yes sir.
Q. How many pounds of cotton in a bale, of seed cotton?
A. Fifteen hundred pounds.
Q. That would make seventy-five hundred pounds—did you market that cotton about the time—would that make seventy-five hundred pounds?
A. Yes sir.
Q. Did you market this cotton about the time he did?
A. He marketed his cotton later than I did.
Q. Was the price changed during that time?
A. Yes sir—he got as much as I got.
Q. Now then, do you know anything about how much corn he raised?
A. No sir, I don't.
Q. Do you know how many acres of corn?
A. No, I could not say to the exact amount of corn, the exact amount of acres—I didn't help gather the corn.
Q. How is that?
A. I didn't help gather the corn that year.
73 Q. What kind of land is that?
A. It is bottom land.
Q. What quality?
A. Well it is good land—river bottom land.
Q. Cross-examine?

Cross-examination of Weepey Moles by Mr. de Graffenried.

By Mr. de Graffenried:

Q. The land that you farmed there of Bunch's is not as good land as you are cultivating now is it?
A. Well I don't believe it is hardly.
Q. Mr. Moles, the south end is subject to drouth on account of sand isn't it?
A. Well there is a portion of it that is.
Q. You ran an account there with Cole and Mathews there during that year didn't you?
A. Sir——

By Mr. Davis: We object to that as immaterial.
By the Court: What is the purpose of that.
By Mr. de Graffenried: To show that he was a crop renter.
By the Court: Sustained.
By Mr. de Graffenried: Exceptions. That is all.

74 By Mr. Neff:

Q. What land are you farming now, that he asked you about?
A. I am farming Mr. Cole's land.
Q. Farming Mr. Cole's land now?
A. Yes sir.
Q. What kind of land is that?
A. Black gumbo land.
Q. How is that?
A. Black gumbo land.
Q. That is all.

By Mr. de Graffenried: That is all.

(Witness excused.)

(Whereupon D. W. WATTERS, a witness called for and on behalf of the plaintiff, having been first duly sworn, according to law, took the witness stand and testified as follows:)

Direct examination of D. W. Watters by Mr. Neff.

By Mr. Neff:

Q. What is your name?
A. D. W. Watters.
Q. Where do you live?
A. Well, I live about four miles east of Porum.
Q. What is your occupation?
A. Farming.
75 Q. Are you acquainted with the Eli Bunch allotment?
A. Yes sir.

Q. Do you know—who had the land,—who had the leasing of that during 1919?
A. Who had the leasing of that in 1919.
Q. Yes, 1919?
A. Well I rented it in 1919.
Q. Who collected the rents?
A. Who collected the rents?
Q. Yes sir?
A. Off of the place in 1919.
Q. Yes sir?
A. Why I suppose Mathews and Cole collected the rents.
Q. What did they pay you?
A. What did they pay me?

By Mr. de Graffenried: We object to the question.
By the Court: What is the purpose of that.
By Mr. Neff: Well, it shows the valuation in 1919.
By Mr. de Graffenried: No sir, there was a law suit here in this court——
By the Court: Sustained.

76 By Mr. Neff:

Q. Do you know the customary way of renting land—what was the customary way of renting land in that community during the years of 1917 and '18?
A. It was one third and one fourth—that is customary.
Q. One third of the corn and one fourth of the cotton?
A. Yes sir.
Q. That goes to the landlord?
A. Yes sir.

Q. That is all?

Cross-examination of Mr. Watters by Mr. de Graffenreid.

By Mr. De Graffenreid:

Q. You rented the land in 1919?
A. Sir?
Q. You rented the land in 1919?
A. Yes, sir.
Q. And you paid cash rental for it——

By Mr. Neff: We object to that—if you will let us go into the whole circumstances——
By the Court: Sustained.
By Mr. de Graffenreid: They show the usual and customary way to rent land was one third and one fourth, I want to show by him that he paid cash rent for this land the very year he is testifying about.
77 By the Court: Sustained.
By Mr. de Graffenreid: We except.

By the Court: You objected to any testimony in regard to 1919 and it was sustained.

By Mr. de Graffenreid: No sir, I didn't object on that grounds.

By the Court: I know, but you objected on another ground.

By Mr. de Graffenreid: I objected to what Cole paid him in the settlement, I never objected to them showing the usual and customary way——

By the Court: There is nothing to base it on.

By Mr. de Graffenreid: Well I am satisfied with my position—we will save our exceptions.

By the Court: Al-right.

By Mr. de Graffenried: That is all.

By Mr. Neff: That is all.

By Mr. De Graffenried:

Q. Part of this land is subject to drouth, isn't it?

A. Well—well, I don't know much about the land, only it didn't make so very well this year, I don't suppose,—I don't know exactly how much it made.

Q. It is pretty sandy isn't it—a part of it?

78 A. Well it is not to say so overly much sand on it, only close to the river and that is not on Mr. Bunch's land you know.

Q. Is it subject to overflow?

A. Subject to overflow.

Q. Yes?

A. I don't remember of their ever being an overflow of it, myself.

Q. Al-right—that is all?

(Witness excused.)

By Mr. Neff: Now I want to read in evidence a part of the evidence of Joe Moles, on the former trial.

By Mr. de Graffenreid: We object to that being read here, there is no reason on earth why his deposition could not be taken, he is still in the jurisdiction of this court, so far as we know, from the evidence in this case.

By the Court: We have a statute on that, what is it.

By Mr. Neff: You can read the former testimony—and we can put in the deposition when he is outside of the county.

79 By the Court: In other words you can take his deposition any place, therefore this statute is not enforced ——

By Mr. de Graffenreid: No, I say out of the jurisdiction of the court——

By the Court: When he is out of the county he is out of the jurisdiction of the court—then there is no place according to your theory——

By Mr. de Graffenreid: Well, we make the objection—that is all we do.

By the Court: You have nothing to advise the court as to why your objection is good.

By Mr. de Graffenreid: I rely upon the statute, if you want me to I will find that.

By the Court: The Court wants to be advised if you have anything upon it before ruling, if that is all you have to offer, the objection will be overruled.

By Mr. de Graffenreid: I want to make an objection, as it is incompetent, irrelevant and immaterial, and it is not competent testimony in this case.

By the Court: Overruled.

By Mr. de Graffenreid: We except.

80 By Mr. Neff: Now is there any objection to Mr. Ingram remaining in here while I read this portion.

By Mr. de Graffenreid: No sir, what are you offering Mr. Neff.

By Mr. Neff: About all I am going to do is show the amount of corn raised in 1918.

By the Court: Whose testimony is this.

By Mr. Neff: Joe Moles.

By the Court: Al-right.

By Mr. Neff: I just want to put in the part I read.

By Mr. de Graffenreid: Well.

By Mr. Neff: I want the record to show that was testimony taken at the former trial.

By Mr. Neff: In the District Court, in and for Muskogee County, State of Oklahoma, Eli Bunch, Plaintiff, vs. Cole and Mathews, Defendants. No. 7062. Evidence. Be it remembered that on to wit, the 6th day of November, 1919, said day being one of the regular judicial days of the regular November, 1919, term of said court, the above entitled and *and* numbered cause came regularly on

81 for hearing, before the Honorable Charles D. Watts, one of the District Judges, in and for said County and State, and the plaintiff appearing in person and by his attorneys, Neff & Neff and Harry G. Davis, and the defendants appearing in person and by their attorneys, Crump & de Graffenreid, and both sides having announced ready for trial, the following testimony is offered and introduced to wit, among other things—I am offering a part of the testimony of JOE MOLES.

By Mr. de Graffenried: To which the defendant objects, as incompetent testimony in this case.

By the Court: Overruled.

By Mr. de Graffenried: We except.

By Mr. Neff:

Q. What is your name?
A. Moles.
Q. Your first name?
A. Joe.
Q. Where do you live?
A. Near Porum.
Q. What is your occupation?
A. Farmer.
Q. Did you farm the Eli Bunch allotment?

A. Yes sir.
Q. When?
A. In '17 and '18.
Q. Who did you rent it from?
A. Mr. Cole.
Q. What rent did you pay?
A. One third and one fourth—one third of the corn and
82 one fourth of the cotton.
Q. Do you know the customary way of renting land in that vicinity during the last six years?
A. Customary renting is one third and one fourth, I suppose, that is the way I rent it——
Q. Then—now in 1918?
A. Well I cultivated a part of the Eli Bunch land, the biggest part of it, and it made to the best of my knowledge on what I had in, about six or seven bales of cotton—six bales I will say.
Q. How much corn?
A. Well I had just a small patch of the Eli Bunch land last year, my brother had a part, I judge I made one hundred to one hundred and twenty five on the Eli Bunch land.
Q. What was corn worth last year?
A. I don't know just what the standing price was, something over a Dollar per bushel, about One Dollar and Twenty Cents, somewhere along there, what I bought this season I paid Two Dollars and Fifty cents a bushel for it.

By Mr. Neff: That is all that I care to offer—I will read this much on cross-examination.

Q. Now in 1918, how much cotton did you say you cultivated on the Eli Bunch land?
A. Cultivated about fifteen or sixteen acres.
Q. How much cotton did you cultivate—did you cultivate any other cotton on any other land that year?
A. No sir.
Q. How much did you raise?
A. About six bales—that is all.

83 By Mr. de Graffenried: Is that all the cross examination.
By Mr. Neff: No.
By Mr. de Graffenried: Well, I object to him reading part of the evidence, and not reading the whole of it.
By the Court: Do you want the rest of it read.
By Mr. de Graffenried: That is my objection.
By the Court: Do you object to it.
By Mr. de Graffenried: I object to him offering a part of the evidence and not the whole of it.
By the Court: The objection is sustained, and at the suggestion of the attorney for defendants, you will be required to read all of the cross examination.
By Mr. Neff: Now, I might suggest, it is the rule on depositions and I suppose the same rule covers this, one party can offer any part he wishes, he sees fit to.

By Mr. de Graffenried: I am taking the position that the whole evidence is incompetent.

By the Court: Then you are not requesting the balance be read.

By Mr. de Graffenried: No sir, I am not requesting it, but
84 I am objecting because he does not read it.

By the Court: Overruled.

By Mr. de Graffenried: We except.

Attached to the testimony of Joe Moles was the Certificate of the Court reporter in the form prescribed by Section 1792 of the Revised Laws of 1910.

(Whereupon A. T. INGRAHAM, a witness called for and on behalf of the plaintiff, having been first duly sworn, according to law, took the witness stand and testified as follows:)

Direct examination of Mr. Ingraham by Mr. Neff.

By Mr. Neff:

Q. What is your name?
A. A. T. Ingraham.
Q. Where do you live?
A. Porum, Oklahoma.
Q. What is your occupation?
A. General Mercantile business.
Q. How long have you been in the general mercantile business?
A. About twenty one or two years.
Q. Do you deal in cotton down there—did you deal in cotton down there in 1917?
A. I did.
Q. You have been subpœnaed as a witness here in this case?
A. Yes sir.
85 Q. Now have you brought your journal showing your cotton dealings during a great part of 1917?
A. I noticed here it covers the month of September and a little better than half of October.
Q. What is the last that this covers?
A. October, 1917.
Q. Now what were cotton prices along about that time?
A. Well on October the 17th, on that day we paid an average of Ten Dollars and Forty cents per hundred for seed cotton.
Q. Now Mr. Ingraham, do you know how the cotton crops around Porum graded in the fall of 1917?
A. As to price or grade.
Q. As to grade?
A. Well in the year 1917—that was an exceptional fall for this country, it began with pretty weather and continued through September and October and practically November, then—before the grade began to deteriorate, that particular year for the reason we had a dry fall.
Q. Then in October and November, how did the cotton grade?

A. Well, I would say a hundred bales in October would run—sufficient amount of it, unless you accidentally got a bad bale, there would be sufficient amount of it running about middling to make the hundred bales grade about middling on the average buying of a hundred bales.

86 Q. Now just explain what you mean by middling grade?

A. Well middling grade of cotton is the standard on which the price varies up or down—the middling basis on cotton is what we all figure from and the big markets and buyers they have a certain price all the year around on middling cotton, then if you have a grade that runs strict middling or middling fair, it is so many points more than middling cotton is worth—if it is a high grade, then strict low middling varies downward so many points off.

Q. Now Mr. Ingraham, will you just do a little figuring for our benefit—we have some figures put in here but we haven't got them totaled—have you a pencil?

A. Yes sir.

By Mr. Davis:

Q. Will you kindly figure the amount of cotton raised on 224 rows at a 130 pounds to the row.

A. I figure it about Twenty-nine Thousand pounds—exactly 29,120.

Q. Will you kindly take one fourth of that?

A. 7,280.

Q. Now Mr. Ingraham, will you figure that out at ten and a half cents a pound?

87 A. Ten Hundred and Ninety-two Dollars, wouldn't it.

Q. Aren't you mistaken on that?

A. I am just looking to see.

Q. How much is one fourth?

A. 7,280.

Q. Then multiply it by 10 and a ½?

A. Well at 10 that would be $728.00 then the half—I got that a little wrong there.

Q. That would amount to how much?

A. $764.40.

Q. Now Mr. Ingraham, will you kindly take nine acres of corn making thirty-five bushels to the acre, and see how much corn it would produce?

A. Two hundred and eighty-five bushels—no three hundred and fifteen.

Q. How many bushel?

A. Three hundred and fifteen.

Q. Now one third of that would be what?

A. One hundred and five?

Q. One hundred and five bushel at $1.20 a bushel would be how much?

A. $126.00.

Q. Now will you kindly add $764.40, the amount of cotton to $126.00, for the corn and state the amount?

88 A. $890.40.

Q. Will you kindly figure six per cent interest on $890.40 for two years?

A. (No answer.)

Q. Does that make a $106.85?

A. No, I really think it would be a $197.00 wouldn't it—did you say eighty nine.

Q. $890.40?

A. Oh yes, I didn't get your first total figured right.

Q. That would be a $106.84?

A. Yes.

Q. Now will you kindly add that to the $890.40?

A. What did you call that last item, interest.

Q. $106.84?

A. $997.24.

Q. Now Mr. Ingraham, will you kindly take three thousand pounds of cotton——

By Mr. de Graffenried: Wait a minute, if the court please, I believe I will offer an objection to this matter of computation by the witness, the jury is supposed to be able to compute when the evidence is in and for the further reason that is a matter of mere computation and to bring a witness in here and go through this
89 mathematical class with him is clearly incompetent and prejudicial to the rights of the defendants.

By Mr. Davis: We can't compel the jury to figure it.

By Mr. White: It is merely a matter——

By the Court: I agree with Mr. White that the attorneys are just as competent to figure and argue it to the jury.

By Mr. de Graffenried: There are men on this jury that can figure it better than we can right now.

By Mr. Davis: If the jury is willing to figure it and go through with that work, al-right.

By the Court: Objection sustained, to any further statement along this line. The court will hold that the attorneys can figure out what the amount is in their argument and state it to the jury.

By Mr. Neff:

Q. Now Mr. Ingraham, were you living at Porum in 1917 and 18?

A. Yes sir.

Q. Who was chairman of the council of defense at Porum?

By Mr. de Graffenried: Objected to.

By the Court: Overruled.

90 By Mr. de Graffenried: We except—we object to it for the reason it is incompetent, irrelevant and immaterial and has nothing to do with this case and throws no light upon the issues involved.

By the Court: Overruled.

By Mr. de Graffenried: We except.

A. Why, I am not quite positive—Mr. J. B. Cole was.
Q. That is all, cross examine?

By Mr. de Graffenried: No questions.

(Witness excused.)

By Mr. Neff: We offer in evidence the stipulation as to certain facts agreed to and I will read that.

(Whereupon said stipulation having been offered in evidence and now read to the court and jury by Mr. Neff, is admitted in evidence by the court, and is in the words and figures, following, to-wit:)

In the District Court in and for Muskogee County, and State of Oklahoma.

Number 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

91 *Stipulation.*

It is hereby agreed by and between the plaintiff by his attorneys, Messrs. Neff & Neff and the defendants by their attorneys, Messrs. Crump, de Graffenried & White that the following statement of facts *are* agreed to and may be offered in evidence in this case:

First. That the plaintiff, Eli Bunch, is a Full Blood, Cherokee Indian enrolled and recognized as such.

Second. That he is the allottee of the land described in plaintiff's petition and is now and has been the legal owner thereof.

Third. That during the year 1915 the plaintiff rented said land to the defendants for agricultural purposes by written contract for one year and by the terms of which the defendants were to pay the plaintiff $75.00 for the use and occupancy of the said land for the year of 1916, that said sum was fully paid by the defendants in cash and accepted by the plaintiff in full satisfaction for the rent of said land for the year of 1916. That said contract was dated and executed on October 4th, 1915, for the use of said land for the year of 1916 and that these defendants used and occupied said land under said written contract.

92 Fourth. That during the year of 1916, to wit; on July 5th, 1916, the plaintiff again rerented said land to these defendants for the year of 1917 by written contract executed on said date and by the terms of which these defendants were to use and occupy said land during the year of 1917 for a cash rental of $75.00 which said sum was then and there paid by defendant and

accepted by the plaintiff in full for the use and occupation of said premises for the year of 1917 and that defendants occupied said land during the year of 1917 as tenants of plaintiff under said contract.

Fifth. That during the year of 1917, the plaintiff became a Soldier of the United States Government and was enlisted in the Navy and during said year he was stationed at New York under the control of the Government and that while in New York these defendants by J. B. Cole wrote to the said plaintiff in regard to leasing the land for the year of 1918 and asked for a rental contract on same and that the plaintiff Eli Bunch in reply to this letter advised the defendants that he had left his allotment in charge of Mary Sunday, his mother, and that they must go to see her in regard to renting it. And thereafter, to-wit, on July 28th, 1917, these defendants went to see Mary Sunday, the mother of the plaintiff in regard to the renting of said land and thereupon the said Mary Sun-
93 day as the agent of the plaintiff, Eli Bunch, entered into a written contract as such agent with these defendants by the terms of which written contract she let and rented to these two defendants the said allotment of land for the year of 1918 for a cash consideration of $75.00 and that these defendants used and occupied said land during the year of 1918 under said written contract entered into with Mary Sunday as the agent of the plaintiff. And it is further agred *this* this stipulation may be regarded as part of the pleadings for the purpose of motion on judgment on the pleadings.

NEFF & NEFF,
Attorneys for Plaintiff.
CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

Endorsed: 7062, Eli Bunch, vs. Cole & Mathews, Agreement of Facts. District Court, State of Oklahoma, County of Muskogee. Filed Feb. 12, 1920. L. D. Martin, Court Clerk.

94 By Mr. Neff: We rest.

By the Court: Proceed.

By Mr. de Graffenried: I want to make a motion.

By the Court: All right, Gentlemen of the Jury, I will give you a five minutes' recess, during the recess you will not discuss this case among yourselves, or with anybody else or permit anyone to discuss it with you, nor will you make up your minds what your verdict shall be until you have—until this case has finally been submitted to you.

(Whereupon the Jury retires from the court room.)

By Mr. de Graffenried: Comes now the defendants, Cole and Mathews, and demurs to the evidence offered by the plaintiff in this case, and for grounds of demurrer state, that the evidence offered by the plaintiff shows that under the contract of rental entered into

by and between the plaintiffs and the defendants, that the defendants were tenants at will of the plaintiff and that the manner of determining the rents due to the plaintiff would be from an
95 inspection of the rental contract entered into and that this plaintiff should not be entitled to recover in this action for further grounds of demurrer, the defendants show that no competent evidence has been offered to show the true measure of damages for the reason—for the rental of said land for the year 1916 and 17—17 and 18.

By the Court: As the court indicated at the beginning of this trial there are some peculiar conditions and circumstances surrounding this case and the evidence introduced by the palintiff shows that Mr. Cole, one of the defendants in this case, was chairman of the council of defense of Porum and the surrounding country, or at Porum during the war—that the court will take judicial notice of the fact that the chairman of the council of defense, in any community was given very great power, relating to the farming interest and conducting of the business of the community and especially relating to farming, the council of defense was a power to see that farms were cultivated, that thrashing was done and em-
96 powered to regulate the harvesting of crops and was given extraordinary power as a war measure. The proof shows that the plaintiff, while he was away from home and in the service of his country was written to by the defendant, Cole, Chairman of the *of the* Council of Defense, concerning the renting of his land for 1918, that the defendant, Cole, was told that this matter was left with the plaintiff's mother. The Court will hold in this case, not based upon any precedents, in as much as there can be no precedents at this time, or a decision at this time, that the fact that the chairman of the council of defense at Porum inquired about the renting of this land for 1918, and was told that the land or that the matter was left in the hands of the plaintiff's mother and the fact that the plaintiff and his mother were full blood indians and were not capable of renting land—that is land during the summer of 1917,—at the time this inquiry was made for the year 1917, and in view of the fact that the defendant Cole took possession of this land in the year 1918 and rented it out to a farmer who gave crop
97 rent for the land, that in so doing, the defendant Cole was acting in the dual capacity of an individual and chairman of the council of defense at Porum, and is accountable to the plaintiff for every cent of rent received from that farm in 1918.

By Mr. White: I want the court to indicate—just make it plain that he was chairman of the council of defense at the time these contracts were entered into.

By the Court: I don't know—I take it that at the time the first contract was entered into, he was not,—that was entered into in 1916, the court is of the opinion that it is a fair conclusion that there was no council of defense at that time and so far as he knows—the court—unless there is some proof to the contrary, will proceed upon the basis that this council of defense was organized sometime

in 1917, and that while defendant Cole had charge of this land in 1918 he was chairman of the council of defense.

By Mr. de Graffenried: You haven't passed on the motion or demurrer.

98 By the Court: The demurrer will be overruled.

By Mr. de Graffenried: To which the defendants both except.

(Whereupon the Jury are returned into open court and take their places in the jury box.)

By the Court: You agree the jurors are all present.

By Mr. White: Yes sir.

By Mr. Neff: We do.

(Whereupon J. B. COLE, one of the defendants, a witness called for and on behalf of the defendants having been first duly sworn, according to law, took the witness stand and testified as follows:)

Direct examination of J. B. Cole by Mr. de-Graffenried.

By Mr. de Graffenried:

Q. Your name is J. B. Cole?

A. Yes sir

Q. You are one of the defendants in this case?

A. Yes sir.

Q. Mr. Cole, how long have you lived in Porum?

A. I believe it is ever since Porum has been there——

Q. Ten or twelve years?

A. Fourteen or fifteen—fourteen years I believe.

99 Q. What is your business there Mr. Cole?

A. I run a general store.

Q. Mercantile store?

A. Yes sir, and own some land and lease some land down there.

Q. Farming land?

A. Yes sir.

Q. About how much land do you lease, Mr. Cole, in that section of the country?

A. Well I don't know.

Q. Roughly?

A. I will say seven or eight hundred—maybe a thousand acres, I don't know.

Q. For what?

A. Cash consideration.

By Mr. Neff: We object to that as incompetent, irrelevant and immaterial.

By Mr. de Graffenried: We expect to show by this witness and others that this land has a cash rental value for 1917 and 18 and show what it is and that is the true measure of damages in the case.

By the Court: Objection sustained.

By Mr. de Graffenried: We except.

100 By Mr. de Graffenried:

Q. Mr. Cole, do you know whether or not the land in controversy, mentioned and described in the plaintiff's petition, has a cash rental value—had a cash rental value for the year 1917 and '18?

A. Yes sir.

By Mr. Neff: Wait a minute, we object to that as incompetent, irrelevant and immaterial and move the answer be stricken.

By the Court: Sustained.

(Whereupon the following offer to prove, is made by the defendants, out of the presence and hearing of the jury.)

By Mr. de Graffenried: To which we except—the defendants now offer to prove that the land described in the plaintiff's petition had a reasonable cash market value—rental value for the years of 1917 and '18, and that the reasonable cash rental value of said land for said two years—and that the said land was worth, as rental, the sum of $2.00 per acre, for the cultivated land and $.25 (Twenty-five cents) per acre for the woods pasture.

By the Court: Any objections.

By Mr. Neff: We object on the same grounds.

101 By the Court: Sustained.

By Mr. de Graffenried: The defendants except—that is all Mr. Cole.

Q. Mr. Cole, do you know Mary Sunday?

A. Yes sir.

Q. What degree of intelligence is she, Mr. Cole—does she understand the English language?

A. She is over the average of the Cherokees.

Q. Can she talk English?

A. Yes sir.

Q. Understand English?

A. Yes sir.

Q. Understand a contract she makes?

A. Well I take it she does, she writes her name well.

Q. That is all—wait a minute, how much of that land is in cultivation Mr. Cole?

A. Hardly half of it.

Q. Forty acres?

A. Hardly half of it.

Q. What is the character of the other land?

A. It is in timber.

Q. Woods pasture?

A. Yes sir.

Q. Mr. Cole, does that land overflow?

102 A. I have saw it under water, a bigger portion of it.

Q. From what?

A. From the river.

Q. What time was that?

A. Oh, it has been several years ago.

Q. What about it—is it drouthy or not?
A. The south end of it is very drouthy.
Q. Do you know what causes that?
A. How is that.
Q. State to the jury what causes it?
A. Well there is so much sand.
Q. Sandy?
A. Yes sir—it can't stand the drouth.
Q. That is all.

By Mr. Neff: That is all.
By Mr. de Graffenried: Stand aside.
By the Court: No questions.
By Mr. Neff: No sir.

(Witness excused.)

(Whereupon F. W. KEITH, a witness called for and on behalf of the defendants, having been first duly sworn, according to law, took the witness stand and testified as follows:)

103 Direct examination of Mr. Keith by Mr. de Graffenried.

By Mr. de Graffenried:

Q. What is your name?
A. F. W. Keith.
Q. What is your given name—your initials?
A. F. W.
Q. F. W. Keith?
A. Yes sir.
Q. Where do you live?
A. I live near Porum.
Q. What direction from Porum?
A. Southwest.
Q. What is your business, Mr. Keith?
A. Farming.
Q. How long have you lived down there?
A. I have lived down there in that country about thirteen years.
Q. Do you know the land—do you own land or rent land?
A. I own land and rent some too.
Q. Mr. Keith, do you know the Eli Bunch land?
A. Yes sir.
Q. Do you know whether that land and land of its character there in that neighborhood has a cash rental value and had a cash rental value in 1917 and '18?

By Mr. Davis: Wait a minute, we object to that as incompetent, irrelevant and immaterial.
104 By the Court: Sustained.
By Mr. de Graffenried: Now I will ask this further question—we except.

By Mr. de Graffenried:

Q. Do you know the reasonable cash rental value of that Bunch allotment for the year 1917 and '18?

By Mr. Davis: We object, as incompetent, irrelevant and immaterial.
By the Court: Sustained.
By Mr. de Graffenried: To which the defendants except.
By Mr. White: And make the same offer.
By Mr. de Graffenried: We now make the same offer to prove by this witness the same state of facts, that we offered to prove by the witness, Cole.
By the Court: Does the plaintiff object.
By Mr. Neff: Yes sir.
By the Court: Sustained.
By Mr. de Graffenried: We except, that is all, Mr. Keith.

(Witness excused.)

(Whereupon LEE STANFIELD, a witness called for and on behalf of the defendants, having been first duly sworn, according
105 to law, took the witness stand and testified as follows:)

Direct examination of Lee Stanfield by Mr. de Graffenried.

By Mr. de Graffenried:

Q. What is your name?
A. Stanfield.
Q. What is your given name?
A. Lee.
Q. Where do you live Mr. Stanfield?
A. Briertown.
Q. Is that in the neighborhood of Porum?
A. It is six miles south.
Q. What business have you been engaged in?
A. Farming.
Q. Farming—do you know the Eli Bunch allotment?
A. Yes sir.
Q. Can you tell, or do you know, whether that land had a cash rental value for the year 1917 and '18?

By Mr. Davis: Now wait a minute, the same objection.
By the Court: Sustained.
By Mr. de Graffenried: Exceptions.

By Mr. de Graffenried:

Q. Now I will ask you one question further, do you know what the reasonable cash rental value of that land was for the years of 1917 and '18?
106 By Mr. Davis: We make the same objections.

By the Court: Sustained.

By Mr. de Graffenreid: To which we except, and the defendant now offers to prove by this witness the same state of facts that he offered to prove by the witness Cole when he was on the stand.

By Mr. Davis: To which we object.

By the Court: Sustained.

By Mr. de Graffenried: To which we except—that is all.

(Witness excused.)

(Whereupon J. B. COLE, one of the defendants, a witness for and in his own behalf, having been recalled for further direct examination and having been heretofore first duly sworn, according to law, took the witness stand and testified as follows:)

Further direct examination of Mr. Cole by Mr. de Graffenried.

By Mr. de Graffenreid:

Q. Mr. Cole, when were you made chairman of the council of defense of Porum?

A. In February, 1918.

Q. You were not chairman of the council of defense, when any of those contracts were made?

107 A. No sir.

Q. That is all—who was present when you were made president of the council of defense?

A. Our Honor here—Judge Wheeler.

By the Court: I helped select him.

By Mr. Neff:

Q. You were chairman when you collected the rents in 1918, wasn't you?

A. I was.

Q. That is all?

By Mr. de Graffenreid: That is all.

(Witness excused.)

By Mr. de Graffenried: Under your Honor's ruling I don't think we have anything further to offer.

By the Court: Both sides rest.

By Mr. Davis: At this time, under the undisputed testimony in this case, we believe the plaintiff is entitled to a judgment and it amounts to $1,404.65, now there is to be deducted from that $75.00 paid for 1916 which he kept—1916 for the 1917 rents, together with six per cent interest thereon which leaves $9.00—which leaves a total amount of $1,320.00 for which plaintiff now moves the

108 court to instruct the jury to return a verdict in this case.

By the Court: Let me ask you Mr. Davis, what have you

figured the rents under the testimony in this case, received by the defendant for the year 1918.

By Mr. Davis: The year 1918, the first item is 3,000 pounds of cotton at 11½¢ a pound one fourth of which would be $60.25, then there was 7,500 pounds of cotton at the same price, one fourth of which would be $215.62, making a total amount of cotton $301.87, for the nine acres of corn making twenty five bushel would be a hundred and twenty five bushel, one third of which at a $1.10 a bushel was $45.82, the deposition of Joe Moles, is that he raised from 120 or a 125 bushel—assuming a hundred bushel at a hundred and ten per bushel, the proof shows, makes $36.66 total of that for 1918, would be $384.35 and six per cent interest.

By the Court: How much without the interest?

By Mr. Davis: $384.35.

By the Court: Al-right.

By Mr. Davis: Six per cent interest on it for one year
109 would be $23.06.

By the Court: Making a total of what.

By Mr. Davis: Total for that one year.

By the Court: Yes.

By Mr. Davis: I haven't figured the total for that year, I figured it all together, $407.41.

By the Court: Now just give me your total for the year 1917.

By Mr. Davis: The total for the year 1917 would be $890.40, exclusive of—$890.40.

By the Court: How much interest.

By Mr. Davis: $106.84.

By the Court: Making a total of what?

By Mr. Davis: $997.24.

By the Court: Gentlemen of the Jury——

By Mr. de Graffenreid: Now before you instruct I want to make a motion.—Comes now the defendants and move the court to instruct the jury to return a verdict in their behalf for the reason that the admitted facts shows that these defendants occupied the land of the plaintiff under a rental contract entered into with the plaintiff at a rental of $75.00 which sum was paid and accepted by the plaintiff in full satisfaction of the rental for the years
110 1917 and '18 and that even though the contracts under which the defendants entered into may be void, still the defendants would be tenants at will of the plaintiff and that the contract has fixed the rental for the rents for 1917 and '18 and is binding on the plaintiff and he cannot therefore recover in this action.

By the Court: The motion is overruled.

By Mr. De Graffenried: We except.

By the Court: Gentlemen of the Jury, I am going to excuse you for five minutes, during the recess I will ask you to remain outside of the court room and don't discuss any matters connected with this case either among yourself or anybody else and don't make up your mind what your verdict shall be in this case.

(Whereupon the Jury are excused from the court room.)

(Whereupon the court takes a recess of five minutes at which time reconvenes in regular session and all parties appearing as heretofore, the Jury present in the box, Whereupon the following
111 proceedings were had and done, to-wit:)

By the Court: Gentlemen, do you agree the jurors are all present.
By Mr. Davis: Yes sir, we do.
By Mr. White: Yes sir.
By the Court: Gentlemen of the Jury, this is rather a peculiar lawsuit, one that don't ordinarily come before a court because of its peculiarity, there is very little precedents to guide the court in determining what is to be done in this case, there don't seem to be much dispute as to the facts, that the defendants, Cole and Mathews, received for the year of 1917, $890.40, being the value of one fourth of the cotton and one third of the corn raised on the land, I think—if they are chargeable for that amount, they should pay six per cent interest amounting to $106.84, making a total of $997.24 for the year of 1917, for the year of 1918 the total value of one fourth of the cotton and one third of the corn amounts to $384.35 and one year's interest thereon at six per cent is $23.00, making a
112 total of $407.41—those figures are not disputed and the court therefore presumes they are correct. The contract entered into in 1916 for the renting of this land in 1917 is conceded to be void, the plaintiff in this case was in school up until April, 1917, and was in the Army, having enlisted sometime in April, it is the opinion of the court that had the plaintiff in this case, early in 1917, gone to the defendants and told the defendants that they could not have the land for 1917 under the void agreement made in July, 1916, and tendered back the $75.00 or if he didn't have the $75.00 at that time without tendering that back, then the defendants, Cole and Mathews, would not have been entitled to the rent in controversy for the year of 1917, and if they had got the rents after having been told by the plaintiff, that he didn't wish to rent them that land for the year of 1917 for a cash rental of $75.00 then he could have recovered from the defendants in this case the sum of $890.40 and interest thereon, making a total of $997.24, but the
113 court is of the opinion that inasmuch as he didn't when he had an opportunity to do so, make any objection or complaint to their use of the land for 1917, up to the time he entered the Government Service in April, he is in the same position as if he didn't enter into the service at all, so far as the year 1917 is concerned, and therefore is not entitled to recover for the year 1917, in this case. The Court is of the opinion that the situation is different concerning the year 1918, that early in 1917, this plaintiff entered the Navy as one of his Government's soldiers, that he was in the Service, and that the defendants wrote him in regard to the land for 1918, this letter having been written during the year 1917, that he wrote back and said that his mother had been intrusted with the care of the land, that the fact that these defendants went to and made a contract with the mother does not relieve them of their obligation to this plaintiff, it is conceded that the contract made
114 with the mother is void and of no effect and the plaintiff in this case, being in the army and subject to the absolute dir-

tion of his government was not in a position to object or affirm any action in regards to his land, and the court is of the opinion that the boys at the front were helpless and the court is of the opinion that it was the duty of every citizen of the United States to look after, care for and protect the families of relatives and the property of the boys who were serving their country, practically without pay—their expenses paid and very little more, the court is of the opinion that the defendants in this case were at fault in attempting to hold the land for the year of 1918 for the payment of $75.00 to the mother, when as the proof shows, they got $384.35 from that land. The court holds that the making of such a profit off of the property of a Soldier who was answering his country's call in time of need is not to be approved by any court of this land. That the court should not approve such an action, that there is an obligation
115 that the citizens of the country owe to those who went to the front — fight for our protection—that the court would be ratifying or would ratify and approve an action which in good conscience cannot be approved by any good citizen and for that reason the court is going to instruct the jury to return a verdict in favor of the plaintiff in the sum of $407.41, being the value of one fourth of the cotton and one third of the corn raised on the land of this plaintiff for the year of 1918—I have prepared that sort of a verdict and will ask one of your number to sign the verdict.

By Mr. De Graffenried: May I ask that the records show whether your Honor deducted from that amount the $75.00 paid.

By Mr. Neff: He never got it.

By Mr. De Graffenried: One of his agents got it—I want the record to show, I request the court to deduct that.

By the Court: The record may so show.

By Mr. De Graffenried: The defendant excepts to the court denying the request.

By the Court: The record may show that prior to the di-
116 rection of this verdict, the court overrules the motion of the plaintiff for a verdict—a verdict in the sum of $1,320.00.

By Mr. Davis: To which action of the court the plaintiff excepts.

By Mr. De Graffenried: Now I desire to except on behalf of the defendants to the instruction given by the court to return a verdict in favor of the plaintiff, for the amount mentioned in the verdict.

By the Court: It may be so shown. Anything further.

By Mr. Neff: That is all.

By Mr. De Graffenried: That is all.

(Whereupon, the verdict is handed by the Jury and signed by one of the Jurors and returned into the court.)

By the Court: Read the verdict.

(Whereupon the verdict is read by the court clerk.)

By the Court: Gentlemen of the Jury, is that your verdict, under the instruction of the court.

By the Jurors: Yes sir.

By the Court: You may now be excused until 1:00 o'clock.

117 (The above and foregoing testimony was all of the testimony offered or introduced upon the trial of said cause.)

118 That thereafter, to wit, and on the 14th day of February, 1920, the jury returns into open court their verdict, which said verdict was duly received by the court, and spread of record upon the journals of said court, in record number 18 at page 375, and is in the words and figures following, to wit:

Civil Verdict in the —— Court, Muskogee County.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Verdict.

We, the Jury in the above entitled action, duly empaneled and sworn, upon our oaths, and as instructed by the court, find the issues in favor of the plaintiff in the sum of $407.41 being the value of ¼ of the cotton and ⅓ of the corn raised on said plaintiff's land for the year 1918, and interest thereon.

W. J. WEAVER,
As Foreman.

The above and foregoing instrument is endorsed as follows:

119 No. 7062, Eli Bunch, Plaintiff, vs. J. B. Cole, et al., Defendant-. Civil Verdict. District Court, State of Oklahoma, County of Muskogee, ss. Filed Feb. 14, 1920, L. D. Martin, Court Clerk. Recorded in District Court, Journal Record No. 18, Page 375. L. D. Martin, Court Clerk. Compared O. C.

That thereafter, to wit, on the 14th day of February, 1920, the plaintiff, by and through his attorneys of record, filed in the office of the court clerk, his motion for a new trial, which said motion for a new trial, so filed on said date, is in the words and figures, following, to wit:

In the District Court in and for Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Motion for New Trial.

Comes now said plaintiff and moves the court to vacate and set aside the verdict in this cause and to grant the plaintiff a new trial upon the following grounds:

1. Error in the assessment of amount of recovery the amount allowed being too small in that plaintiff should have been al-
120 lowed to recover the 1917 rents from the land in controversy as well as the 1918 rents.

2. That the verdict is contrary to law in so far as the same is less than $1,320.00, and is contrary to the evidence.

3. Errors of law occur-ing at the trial and excepted to by the plaintiff.

4. Error in denying the motion of the plaintiff for a directed verdict in the sum of $1,320.00.

5. Error in directing a verdict for the plaintiff for only $407.41.

6. Error in holding that the defendants were not liable for the 1917 rents of the land in controversy.

Wherefore plaintiff prays that a new trial be granted.

NEFF & NEFF,
Attorneys for Plaintiff.

The above and foregoing instrument is endorsed as follows:

No. 7062, District Court, Eli Bunch, Plaintiff, vs. J. B. Cole, et al., Defendants. Motion for New Trial. District Court, State of Oklahoma, County of Muskogee, ss. Filed Feb. 14, 1920, L. D. Martin, Court Clerk. Mo. O. R.

121 That thereafter, and on to wit, the 16th day of February, 1920, the court made and entered its journal entry of judgment, which said journal entry of judgment was duly filed in the office of the court clerk, on said date, and duly spread of record upon the journals of said court, and is in the words and figures, following, to wit:

In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Journal Entry of Judgment.

Now on this 14th day of February 1920, this cause duly comes on for trial and the plaintiff appears in person and by attorneys and the defendants appear in person and by attorneys and both sides announce ready for trial and the jury is empaneled and sworn and the evidence is heard and at the close of plaintiff's evidence the defendants demur thereto and the demurrer is overruled and the defendants except, and at the close of the whole case the plaintiff moves for a directed verdict for $1,320.00, which is denied by the court, and
the plaintiff excepts and the defendants move for a directed
122 verdict which is by the court denied and the defendants except and the Court of its own motion directs a verdict in favor of the plaintiff in the sum of $407.41, being the rent and interest of the land in controversy for 1918, and the plaintiff excepts to the ruling of the court in denying recovery of the 1917 rents and the defendants except to the action of the Court in allowing recovery of the 1918 rents and the jury by direction of the Court returns the following verdict:

Verdict.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

We, the Jury in the above entitled action, duly empaneled and sworn, upon our oaths, and instructed by the Court, find the issues in favor of the plaintiff in the sum of $407.41, being the value of the one-fourth of the cotton and one-third of the corn raised on said plaintiff's land for the year 1918, and interest thereon.

H. T. WEAVER,
Foreman.

It is therefore ordered, adjudged and decreed that the plaintiff Eli Bunch, do have and recover of the defendants J. B. Cole and
123 T. B. Mathews, the sum of $407.41, and the costs of the action taxed at $— to which judgment both the plaintiff and the de-

fendants except and in open Court give notice of appeal therefrom to the Supreme Court of the State of Oklahoma.

BENJAMIN B. WHEELER,
Judge.

(O. K.
DE GRAFFENRIED.)

The above and foregoing instrument is endorsed as follows:

District Court. No. 7062. Eli Bunch, Plaintiff, vs. J. B. Cole and T. B. Mathews, Defendants. Journal Entry of Judgment. District Court, State of Oklahoma, County of Muskogee, ss. Filed Feb. 16, 1920. L. D. Martin, Court Clerk. Recorded in District Court, Journal Record No. 18, Page 377. L. D. Martin, Court Clerk. Compared. O. C.

That thereafter, to wit, and on the 16th day of February, 1920, the defendants by and through their attorneys of record filed in the office of the court clerk, a motion for a new trial, which said motion for a new trial, so filed on said date, is in the words and figures, following, to wit:

124 In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Doing Business under the Firm Name of Cole & Mathews, Defendants.

Motion for a New Trial.

Come now the defendants in the above entitled cause by their attorneys, Crump, De Graffenried & White and moves the court to set aside the verdict of the jury rendered herein and grant them a new trial for the following reasons, to-wit, which materially affect the substantial rights of these defendants.

1st. Because the verdict of the jury is contrary to law.

2nd. Because the verdict of the jury is contrary to the evidence, and is not supported by either the evidence or the law.

3rd. Because of irregularities in the proceedings of the Court and of orders made by the Court by which the defendants were prevented from having a fair trial.

4th. Because of errors of law occurring at the trial and was duly excepted to by the defendants.

125 5th. Because the Court erred in overruling the motion of the defendants for judgment on the pleadings taken in connection with the agreed statement of facts filed herein which agreed

state of facts was by agreement of the parties to be considered a part of the pleadings filed herein for the purpose of the motion for judgment on the pleadings, to which ruling of the Court in overruling such motion the defendants duly excepted.

6th. Because the Court in overruling said Motion for judgment on the pleadings erred in holding that even though the contract entered into by and between the plaintiff through his agent and authorized representative Mary Sunday, although void and that these defendants being tenants at will, still, that the contract could not be looked to in determining the rents to be paid by these defendants and in further holding that said contract could not be paid by these defendants, to which ruling of the Court the defendants enforced as to the provisions governing the amount of rent to be then and there duly excepted.

7th. Because the Court erred in permitting the plaintiff over the objection of the defendants to show by the evidence of plaintiff's witnesses the amount of crops raised on the lands in contro-
126 versy for the year 1918 and in further holding that the plaintiff was entitled to recover one third of all the grain raised and one fourth of all the cotton raised by these defendants on said land and further erred in permitting the plaintiff to prove the value of the corn raised on said land during the year 1918 and the value of the cotton raised on said land during the year 1918 and then directing that the plaintiff should recover the value of one third of said corn and the value of one fourth of said cotton so raised, to all of which ruling of the Court the defendants excepted at the time.

8th. Because the Court erred in holding that the one third of all grain raised and one fourth of all cotton raised on said land during the year 1918 was the true measure of damages for the use and occupation of said land by these said defendant- during the year 1918 to which ruling of the Court the defendants at the time excepted.

9th. Because the court erred in refusing to permit the witnesses J. B. Cole, —— Stanfield and —— Keith who were witnesses for the defendant to testify that the land in controversy in plaintiff's petition had a cash rental value for the year 1918 and that they knew the cash rental value of said land. The Plaintiff ob-
127 jected to the introduction of this evidence and the Court sustained the objection to which the defendants duly excepted at the time.

10th. Because defendants offered to prove by said three witnesses that the land mentioned and described in plaintiff's petition had a cash rental value for the year 1918 and that they knew the rental value of said land, they being acquainted with the rental value of the land in the neighborhood of this land and that the said rental value of said land was $2.00 per acre, to which offer the plaintiff objected and the Court sustained the objection to which the defendants then and there duly excepted.

11th. Because the Court erred in overruling the motion of the defendants herein that the Court instruct the jury to return a verdict in favor of the defendants to which ruling of the court the defendants at the time excepted.

12th. Because the Court erred in directing the jury to return a verdict against these defendants for the sum of $407.41 being the amount of the rents for one third of the corn and one fourth of the cotton raised on said land during the year 1918 to which action of the Court in preemptorily instructing the jury the defendants at the time excepted.

128 13th. Because the Court erred in refusing to instruct the jury to deduct from the amount of rents for 1918 the sum of $75.00 which all parties agreed had been paid by these defendants for the year 1918, to which ruling of the Court the defendants then and there duly excepted.

14th. Because the Court erred in holding and instructing the jury that substantially as follows: That because of the fact that the defendant J. B. Cole, was chairman of the Council of Defense at Porum, in 1918 that it became his duty as such chairman and as an American citizen to conserve the property of this plaintiff during the time that he was engaged in the war and to collect for him the value of one third of all the corn raised on the land in controversy and one fourth of all the cotton and to pay same over to this plaintiff upon his return from the war and for this reason that he had not done so the jury were instructed to return a verdict that was returned, to all of which instruction and holding by the Court the defendants duly excepted.

Wherefore These defendants pray that the verdict herein rendered by the jury shall be set aside and that this Court grant them a new trial.

CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for the Defendants.

129 The above and foregoing instrument is endorsed as follows.

No. 7062. In the District Court of Muskogee County, State of Oklahoma, Eli Bunch, Plaintiff, vs. Cole & Mathews, Defendants. Motion for new trial. District Court, State of Oklahoma, County of Muskogee, ss. Foled Feb. 16, 1920. L. D. Martin, Court Clerk. Crump, de Graffenried & White, Attorneys for Defendants. M. O. O. R.

That thereafter, to wit, and on the 20th day of February, 1920, the court made and entered its order overruling the motions of the plaintiff and the defendants, for new trials herein, and that thereafter, on the 21st day of February, 1920, the court entered its order overruling separately the motion of the plaintiff for a new trial, and the motion of the defendants for a new trial, which said orders so made and entered, were duly spread *or* record upon the journals of said court, and are in the words and figures following, to wit:

In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

T. B. COLE & T. B. MATHEWS, Defendants.

130 *Order Overruling Motion for New Trial.*

Now on this 20th day of February, 1920, came on to be heard the Motion of Defendants to set aside the verdict rendered herein and grant them a new trial and both parties appeared by their attorneys and announced ready on said motion and the Court after hearing the arguments of counsel and being fully advised in the premises is of the opinion that said Motion should be denied.

It is therefore ordered and adjudged by the Court that the Motion of the defendants filed herein for a new trial be, and the same is hereby in all respects overruled. To which ruling of the Court the defendants excepted and in open Court gave notice of their intention to appeal to the Supreme Court of the State of Oklahoma which is ordered by the Court to be noted on the proper minutes of the Court and for good cause shown the defendants are allowed 30 days from this date to serve case made; 10 days allowed plaintiff thereafter to suggest amendments and the same to be settled by the Judge on 5 days' notice by either party.

It is further ordered that the supersedeas bond of the defendants is hereby fixed at the sum of $900.00 and that the defendants be allowed 10 days in which to file said bond and when so filed
131 and approved by the Clerk of this Court, execution in this cause shall be stayed.

It is further ordered by the Court that the case made together with writ of error shall be filed in the Supreme Court within 120 days from this date.

BENJAMIN B. WHEELER,
District Judge.

The above and foregoing instrument is endorsed as follows:

No. 7062. In the District Court of Muskogee County, State of Oklahoma. Eli Bunch, Plaintiff vs. J. B. Cole and T. B. Mathews, Defendants. Order overruling motion for new trial. District Court, State of Oklahoma County of Muskogee, ss. Filed Feb. 21, 1920. L. D. Martin, Court Clerk.

In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELY BUNCH, Plaintiff,

vs.

J. B. COLE and T. B. MATHEWS, Defendants.

Order.

Now on this 20th day of February, 1920, the motion of the plaintiff for a new trial duly comes on to be heard and the plaintiff
132 and the defendants appear by attorneys and the Court does order that the motion of the plaintiff for a new trial be and the same hereby is over ruled to which ruling of the court the plaintiff excepts and in open Court and in the presence of the attorneys for the defendants gives notice of his intention to appeal to the Supreme Court of Oklahoma, from the order over ruling his motion for a new trial and from the final judgment in the cause.

BENJAMIN B. WHEELER,
Judge.

The above and foregoing instrument is endorsed as follows:

No. 7062. Eli Bunch vs. J. B. Cole, et al. Order overruling plaintiff's motion for a new trial. District Court, State of Oklahoma. County of Muskogee, ss. Filed Feb. 21, 1920. L. D. Martin, Court Clerk.

133 That thereafter, to wit, and on the 23rd Day of February, 1920, the defendants filed in the office of the court clerk, their supersedeas bond in the sum of $900.00 which said supersedeas bond was duly approved on said date by the court clerk and spread of record on the bond records of said court, and is in the words and figures following, to wit:

In the District Court of Muskogee County, Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants.

Supersedeas Bond.

Know all men by these presents: That we, J. B. Cole and T. B. Mathews, doing business under the firm name of Cole & Mathews, as principal and Coy Harrison and Geo. M. Neal as sureties acknowl-

edge ourselves to owe and be indebted unto Eli Bunch the plaintiff, in the penal sum of nine hundred ($900.00) dollars to be levied of our goods and chattels, lands and tenements, to be void however upon the following conditions, to-wit:

134 That whereas on the 14th day of February, 1920, in the above entitled cause, judgment was rendered on verdict of a jury in favor of Eli Bunch, the plaintiff and against these defendants in the sum of four hundred seven dollars and forty one ($407.41) cents and,

Whereas the defendants are desirous of appealing from said judgment to the Supreme Court of the State of Oklahoma.

Now, therefore, if the plaintiffs in error will pay the condemnation money and all cost in case the judgment rendered in said cause should be affirmed in whole or in part, then and in that event the above obligation is to be void and of no effect. Otherwise to remain in full force and effect.

J. B. COLE,
T. B. MATHEWS,
Principals.
COY HARRISON,
GEO. M. NEAL,
Sureties.

Approved this the 23rd day of February, 1920.

L. D. MARTIN,
Court Clerk,
By J. H. STALEY,
Deputy.

135 The above and foregoing instrument is endorsed as follows:

No. 7062. In the District Court of Muskogee County, State of Oklahoma. Eli Bunch, Plaintiff, vs. J. B. Cole & T. B. Mathews, Defendants. Supersedeas Bond. District Court, State of Oklahoma, County of Muskogee, Filed Feb. 23, 1920. L. D. Martin, Court Clerk.

136 The above and foregoing sets out fully and correctly all the pleadings filed in said cause, all motions filed or made, and all rulings and orders made thereon; all exceptions taken by plaintiff and defendants to such rulings and orders; all the evidence offered, introduced or received upon the trial; all objections and demurrers thereto, the rulings and orders of the Court thereon and exceptions taken by plaintiff and defendants to such rulings and orders, the judgment of the Court and exceptions thereto, and the same is a true and correct statement and complete transcript of all pleadings, motions, evidence, findings, judgments and proceedings in said cause.

137 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants.

Certificate of Attorneys.

We hereby certify that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered or introduced by both parties, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true, correct and complete case-made.

Witness our hands this 23rd day of February, 1920.

NEFF & NEFF,
HARRY DAVIS,
Attorneys for Plaintiff.
CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

138 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants.

Tender of Case-made.

To the above-named plaintiff and his attorneys of record, Neff & Neff, and Harry G. Davis, Esqs.:

The above and foregoing case-made is hereby tendered to and served upon you and each of you, as a true and correct case-made in the above entitled cause, and as a true and correct statement and complete transcript of all pleadings, motions, orders, evidence, findings, judgments and proceedings in the above entitled cause, this 23 day of February, A. D., 1920.

CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

To said defendants and their attorneys of record the foregoing is tendered to you as a case made for the plaintiff this 23rd day of February 1920.

NEFF & NEFF,
HARRY G. DAVIS,
Attorneys for Plaintiff.

139 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants.

Acceptance of Service.

We, the undersigned, Neff & Neff, and Harry G. Davis, attorneys of record for the above named plaintiff hereby accept and acknowledge due, legal and timely service of the above and foregoing case-made, on us, this 23rd day of February, 1920.

NEFF & NEFF,
HARRY G. DAVIS,
Attorneys for Plaintiff.

We the undesigned attorneys for the defendants acknowledge service of the foregoing case made this 23rd day of February 1920.

CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

140 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants

Stipulation of Attorneys.

We, the undersigned, the attorneys for the plaintiff and defendants, hereby stipulate and agree that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had in said cause, all the evidence offered and introduced, all the orders and rulings made and exceptions allowed, and all the

record upon which the said judgment and journal entry in said cause were made and the same is a full, true, correct and complete case-made; and the plaintiff and defendants waive the right to suggest amendments to said case-made, and hereby consents
141 that the same may be settled immediately and without notice, and hereby joins in the request that the Judge of said Court settle the same and order this case-made certified to the Clerk of the Supreme Court of the State of Oklahoma, and filed according to law, and said plaintiff and defendants hereby waive the issuance and service of summons in error from the Supreme Court of the State of Oklahoma.

NEFF & NEFF,
HARRY G. DAVIS,
Attorneys for Plaintiff.
CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants.

142 In the District Court in and for Muskogee County, State of Oklahoma.

No. 7062.

ELI BUNCH, Plaintiff,

vs.

J. B. COLE & T. B. MATHEWS, Defendants.

Certificate of Trial Judge.

Be it remembered, That on this the 25th day of February, A. D., 1920, at one o'clock P. M., at the Court House in the City of Muskogee, County of Muskogee, State of Oklahoma, the above and foregoing case-made was presented to me, Benjamin B. Wheeler, Judge of said Court, before whom said cause was tried, to be settled and signed as the original case-made herein, as required by law, by the parties to said cause, and it appearing to me that said case-made has been duly made and served upon the defendants within the time fixed by the order of this court and in the time and in the manner and form provided by law, that said plaintiff is present by his attorneys, Neff & Neff, and Harry G. Davis, Esquires, and the defendants having waived their right to suggest amendments and requested that this case-made be settled without notice, and said case-made having
143 been examined by me is found to be a true and correct statement and complete transcript and contains all the pleadings, motions, orders, evidence, findings, judgments and proceedings had in said cause, and I hereby allow, certify, settle and sign the same as a true and correct case-made in said case, and hereby order that the Clerk of said Court attest the same with his name and the seal of this Court, and file the same of record, as provided by law.

Witness my hand the date above written.

BENJAMIN B. WHEELER,
Judge of the District Court.

Attest:
[SEAL.] L. D. MARTIN,
Court Clerk.
By W. H. BALLARD,
Deputy.

District Court, State of Oklahoma, County of Muskogee. Filed Feb. 25, 1920.

L. D. MARTIN,
Court Clerk.

144 And thereafter, on March 2nd, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, February Term, 1920, March 2nd, 1920, Eighth Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that the motion to advance filed in the above cause, be, and the same is hereby overruled.

145 And thereafter, on December 14th, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, December Term, 1920, December 14th, 1920, First Judicial Day.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that the above cause be advanced and set for the April 1921 term of court.

146 And thereafter, on April 12th, 1921, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, April Term, 1921, April 12th, 1921, First Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day the above cause is submitted on the record and briefs filed therein.

147 And thereafter, on May 31st, 1921, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, April Term, 1921, May 31st, 1921, Twelfth Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed with instructions to sustain the motion of the defendants for judgment on the pleadings and stipulation of facts, and render judgment in favor of the defendants and against the plaintiff.

Opinion by Miller, J. Harrison, C. J., Johnson, McNeill, Elting and Kennamer, J. J., concur.

148 In the Supreme Court of the State of Oklahoma.

No. 11230.

J. B. COLE and T. B. MATHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Syllabus.

Filed in Supreme Court of Oklahoma, May 31, 1921. William M. Franklin, Clerk.

1. Any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will unless the contrary is shown, except as herein otherwise provided. Section 3783 R. L. Okla. 1910.

2. A tenant in possession of land under a void or voidable lease for one or more years creates a tenancy at will.

3. A tenancy at will is an estate which simply confers a right to the possession of the premises leased for such indefinite period as both parties shall determine such possession shall continue.

4. Where an Indian leases his restricted land for a cash rental, even though the lease be void and the tenant is permitted to occupy the premises during the term of the lease, such Indian cannot thereafter maintain an action to recover the rental value of the land based on a share of the crop for the year so rented.

5. Where a tenant enters into possession under a void lease and he is permitted by the landlord to retain such possession, the terms specified in the lease for the payment of rent governs the tenant's liability for rent and the landlord's right to recover for the use and occupancy of the premises.

Error from the District Court of Muskogee County, Oklahoma.

Benjamin B. Wheeler, Judge.

Action by Eli Bunch against J. B. Cole and T. B. Mathews to Recover Rents on Farming Land. Judgment for the Plaintiff. Defendant's Appeal.

Reversed.

W. J. Crump, R. P. de Graffenried, Myron White, Attorneys for Plaintiffs in Error.

William Neff, L. E. Neff, Harry G. Davis, Attorneys for Defendant in Error.

149 *Opinion of the Court by Miller, J.*

This action was commenced in the District Court of Muskogee County on June 5, 1919 by Eli Bunch as plaintiff against J. B. Cole and T. B. Mathews, defendants, to recover the rental value of certain land belonging to the plaintiff for the years, 1916, 1917 and 1918. The case was tried to a jury and at the close of the trial the court gave a peremptory instruction to the jury to return a verdict in favor of the plaintiff for a certain sum and the court thereupon rendered judgment on the verdict of the jury. The defendants filed a motion for a new trial which was overruled and perfected this appeal. For convenience the parties will be referred to as they appeared in the court below.

The petition states that the plaintiff is a full-blood Cherokee Indian and so enrolled. Plaintiff's claim is for the use of eighty acres of land, forty acres of which is his homestead allotment and the remaining forty acres a part of his surplus allotment. That by reason of certain acts of Congress his allotment was inalienable and he could not lease the homestead for more than one year at a time. That it is bottom land and approximately forty acres was in cultivation and the remaining part in timber and pasture. Defendants had the use of the land during the years of 1916, 1917 and 1918. Part of the cultivated portion of the land was put in cotton and part in corn each year. He states that in May, 1917, he enlisted in the United States Navy and served in the Navy until he was discharged in January 1919. He then asks that he recover $2,625.00 as rents for the years 1916, 1917 and 1918 and exemplary damages in the sum of $1,000.00.

The defendants filed an answer setting up rental contracts for this land for the years 1916, 1917 and 1918 and alleged the rents had been paid under the terms of the contract. To this answer plaintiff filed a verified general denial. It will not be necessary to make any detailed statement of the defense set up in the answer as practically all of defendant's defense has been agreed to in a stipulation of facts entered into by the parties, which is as follows:

150 "It is hereby agreed by and between the plaintiff by his attorneys, Messrs. Neff & Neff, and the defendants by their attorneys, Messrs. Crump, de Graffenried & White, that the following statement of facts are agreed to and may be offered in evidence in this case:

"First. That the plaintiff, Eli Bunch, is a full-blood Cherokee Indian enrolled and recognized as such.

"Second. That he is the allottee of the land described in plaintiff's petition and is now, and has been, the legal owner thereof.

"Third. That during the year 1915 the plaintiff rented said land to the defendants for agricultural purposes by written contract for one year and by the terms of which the defendants were to pay the

plaintiff $75.00 for the use and occupancy of the said land for the year of 1916, and that said sum was fully paid by the defendants in cash and accepted by the plaintiff in full satisfaction for the rent of said land for the year of 1916. That said contract was dated and executed on October 4th, 1915, for the use of said land for the year 1916, and that these defendants used and occupied said land under said written contract.

"Fourth. That during the year of 1916, to-wit, on July 5th, 1916, the plaintiff again re-rented said land to these defendants for the year of 1917 by written contract executed on said date and by the terms of which these defendants were to use and occupy said land during the year of 1917 for a cash rental of $75.00, which said sum was then and there paid by defendants and accepted by the plaintiff in full for the use and occupation of said premises for the year of 1917, and that defendants occupied said land during the year of 1917 as tenants of plaintiff under said contract.

"Fifth. That during the year of 1917, the plaintiff became a soldier of the United States Government and was enlisted in the navy, during said year he was stationed at New York under the control of the Government, and that while in New York these defendants by J. B. Cole wrote to the said plaintiff in regard to leasing the land for the year of 1918, and asked for a rental contract on same and that the plaintiff, Eli Bunch, in reply to this letter advised the defendants that he had left his allotment in charge of Mary Sunday, his mother, and that they must go to see her in regard to renting it. And thereafter, to-wit, on July 28th, 1917, these defendants went to see Mary Sunday, the mother of the plaintiff in regard to the renting of said land and thereupon the said Mary Sunday as the agent of the plaintiff Eli Bunch, entered into a written contract as such agent with these defendants, by the terms of which written contract she let and rented to these two defendants the said allotment of land for the year 1918, for a cash consideration of $75.00, and that these defendants used and occupied said land during the year 1918 under said written contract entered into with Mary Sunday as the agent of the plaintiff. And it is further agreed that this stipulation may be regarded as part of the pleadings for the purpose of motion on judgment on the pleadings.

NEFF & NEFF,
Attorneys for Plaintiff.
CRUMP, DE GRAFFENRIED & WHITE,
Attorneys for Defendants."

The Defendants then filed the following motion for judgment on the pleadings:

"Comes now the defendants and moves the Court to grant them a judgment on the pleadings together with the stipulation of facts filed herein and of this they pray judgment of the Court."

This was overruled by the Court. Thereafter a trial was
151 had with the results as above stated. The defendants make several assignments of error. Before considering any of them, we wish to observe that the record discloses plaintiff to be a very intelligent Indian, he having had seven years' schooling in the Chilocco Indian School and two years in the common schools before going to Chilocco. It will only be necessary to consider the motion for judgment on the pleadings and stipulation of facts. The motion should have been sustained.

The defendants in error have cited a large number of cases which as we view this case have no application and it will not serve any good purpose to point out the distinguishing features.

The only reason claimed that these leases were void is that they were made prior to the date of the beginning of the lease. The courts have recognized that it was often necessary and to the best interest of the Indian to lease his land prior to the first day of January of the year for which the land is leased.

The plaintiff was satisfied with the rental for the year 1916 of $75.00 and made no complaint. He certainly could not make a complaint two or three years thereafter. In 1916, he was willing to lease his land for the year 1917 for a cash rental of $75.00. The defendants continued in possession and put in their crops, all of this occurring before he enlisted in the Navy and he made no objections to it. He certainly cannot be heard to complain two years later. In July, 1917, he instructed the defendants to make arrangements with his mother for the leasing of the land for 1918. Under this instruction they did arrange for the leasing of the land and on the same terms that he had been willing to lease it for the preceding years. They paid the cash rental in advance as had been their custom and it does not appear that any undue advantage was taken. If the lease was void so that he could have demanded possession of the premises but failing to demand possession he waived that right, therefore a tenancy at will existed.

This was held in Peters v. Holder, 40 Okla. 93, 136 Pac. 400:

152 "A tenant in possession under a void or defective lease for a term of years creates a tenancy at will, and, if periodical rent be paid, the tenancy becomes one from year to year. Tate v. Gaines, 25 Okla. 141, 105 Pac. 193, 26 L. R. A. (N. S.) 106; 24 Cyc. 1031.

Section 3783, Revised Laws of Oklahoma, 1910, provides:

"Any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will unless the contrary is shown, except as herein otherwise provided."

In Tate v. Gaines, 25 Okla. 141, 105 Pac. 193, Dunn, J., quotes approvingly from Cunningham v. Holton, 55 Mo. 33, which court defines a tenancy at will as follows:

"A tenancy at will is an estate which simply confers a right to the possession of the premises leased for such indefinite period as

both parties shall determine such possession shall continue. The estate may arise by implication as well as by express words."

Conceding the lease to be void, the rule is that if the tenant goes into possession under the lease and holds under the lease the terms of the lease stipulating the amount of rent to be paid shall govern the rents the landlord is entitled to receive as well as the amount of rents the tenant is liable for.

Evans v. Winona Lumber Co., 16 N. W. 404; Laughran v. Smith, 75 N. Y. 205; Thurber v. Dwyer, 10 R. I. 355; Larkins v. Avery, 23 Conn. 304; Morrill v. Mackman, 24 Mich. 279.

If the plaintiff had been seeking to obtain possession of the premises because the lease was void a very different question would be presented here. It is urged by the plaintiff that he was in the Navy from May, 1917, until the end of the year 1918. This is all true and we believe that every protection should be given the boys who responded to the call of their country.

If we say the acts of an agent duly appointed by a person while they were in the service of either the army or navy may be ignored at will, it will open the door for all kinds of fraud. Such a rule would make it unsafe for any person to deal either with the soldier or his agent in any way. The result would be that all of the real estate of the soldier would remain idle and he would not re-
153 ceive any income whatever from it. If he rented the land for cash rent, he could rescind the cash payment clause in the contract and demand that the tenant account on a basis of a share of the crop. If he rented it for a share of the crop and the tenant delivered the agreed share as per the contract, he could then say the rent received was not enough and that it was worth a certain sum on a cash basis and demand settlement on that basis. If any such rule had been established before the war, or if it was known such a rule would thereafter be established, it would have been unsafe for any person to contract to rent land belonging to a soldier or belonging to a person that by any possible means might become a soldier. As a result millions of acres would have been uncultivated at the very time the products of the soil were most needed.

The plaintiff contends:

"That where the Chairman of the Council of Defense took charge of the land of a soldier under contracts conceded to be void, and rented the same out, he is chargeable as a trustee for what he collected; that the chairman of the Council of Defense cannot be allowed to deny that the land was actually worth what he received for its use;"

This has no application for this plaintiff specifically designated his mother as his agent to attend to the leasing of the land for him. The chairman of the Council of Defense had nothing to do with it.

The plaintiff makes a further statement in his brief (brief of defendant in error) that the lease was void for the reason that Cole and Matthews sublet the land to others parties. This might be

grounds to dispossess the persons in actual possession of the premises, but does not in any way affect the rights of the parties in this action.

The judgment of the trial court is reversed with instructions to sustain the motion of the defendants for judgment on the pleadings and stipulation of facts, and render judgment in favor of the defendant and against the plaintiff.

Harrison, C. J., Johnson, McNeill, Elting and Kennamer, J. J., concur.

154 In the Supreme Court of the State of Oklahoma.

No. 11230.

J. B. COLE and T. B. MATTHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Petition for Rehearing.

Filed in Supreme Court of Oklahoma, Jun. 14, 1921. William M. Franklin, Clerk.

The defendant in error moves the court to grant a rehearing upon the following grounds, to-wit:

As will be pointed out in the latter part of this petition the decision nullifies all of the laws of the United States, prohibiting the taking of leases from full-blood Indians and the decision is not good law for the reason that it holds that effect can be given to the terms of a contract made in violation of the prohibition of a positive law by a person not sui juris. But before taking up the legal aspects, attention is called to the injustice of the decision rendered in this case. The facts are not stated in the opinion.

The decision in this case calls to mind the words of Kipling's poem:

"For it's Tommy this, an' Tommy that, an'
'Tommy wait outside';
But it's 'Special train for Atkins' when
the trooper's on the tide,
O it's 'Thin red line of 'eroes' when the
drums begin to roll.

For it's Tommy this, an' Tommy that, and'
'Chuck him out, the brute!'
But it's 'Saviour of 'is country', when the
guns begin to shoot."

Only four years ago men were urged to enlist to save our country. They were told, their service would never be forgotten by a grateful people and those staying behind would look after
155 their property while away. The war has been over a period of two years and forgotten now are the promises made and

the services rendered. Eli Bunch enlisted at the opening of the war. J. B. Cole remained behind. J. B. Cole endured none of the hardships of the war. He was chairman of the Council of Defense at Porum. When public meetings were held, he presided. His name appeared in the newspapers as the first of the public spirited citizens of Porum, who was sacrificing money and time to the winning of the war.

As the war went on, prices went up again and again. J. B. Cole rented out the land of the absent soldiers. He rented out the land of Eli Bunch for 1918 and 1918, while Eli Bunch was away in the war. The opinion says, "The defendants continued in possession and put in their crops." This is an error, the defendants put in no crops, they spent no money for seeds, they only rented the land to others. J. B. Cole collected without labor, for the two years, the sum of $1,274.75. Of this amount Eli Bunch received $75.00 and his mother $75.00 more. The contracts between Eli Bunch the absent soldier, and J. B. Cole, the patriotic chairman of the Council of Defense at Porum, are conceded to be void. J. B. Cole never had a valid contract. Therefore to award to the absent soldier the actual proceeds of his land while he was away, would not require the setting aside of any valid contract, while on the contrary to allow the chairman of the Council of Defense to retain the $1,124.75 profit, requires that a contract prohibited by the law of the United States, made by a person who under such laws, was not sui juris, be upheld.

In 1921 the case of Eli Bunch, the absent soldier, against J. B. Cole, the chairman of the Council of Defense, who had made 750% profit from the renting out of the land of an absent soldier, possession of which had been obtained under an illegal contract, came
156 on for decision. Forgotten now are the promises and the pledges made when the soldiers went away. Forgotten now are the hardships they underwent. The fact that a profit of 750% was made by the chairman of the Council of Defense through his renting out of the property of an absent soldier is not deemed worthy of mention in the opinion, but it is said, "In July 1917, he instructed the defendant to make arrangements with his mother for the leasing of the land for 1918." Who else could he get to act for him. Eli Bunch was thousands of miles away. His mother was old, she was illiterate, she was an ignorant full-blood Indian. She did not stand on an equal footing with the honorable chairman of the Council of Defense. It does not appear that there was anyone else with whom Eli Bunch could leave the land.

The opinion says, "And it does not appear that any undue advantage was taken." If this be true we are at loss to know of what "undue advantage" could consist. In the year 1917 in which the chairman of the Council of Defense contracted to pay $75.00 to this old, full-blood Indian for the use of her son's land for 1918, he collected for the use of the land the sum of $890.40. In other words he contracted to pay for the use of the land for 1918 only one-twelfth of what he actually collected for its use in 1917. We presume that if he had contracted to pay as much as one-sixth of the amount received, his princely generosity would have been mentioned

and if he had contracted to pay as much as one-third, his generosity would have been regarded as unbelievable.

But it is said that Eli Bunch was satisfied to take $75.00 for the use of his land in 1916 under a contract made in 1915 and it is therefore argued that $75.00 per year must be deemed the fair price for the use of the land for 1917 and 1918. This argument
157 wholly ignores the fact that the years 1917 and 1918 were a period of war prices and the period in which everything brought a great deal more than it did during the period prior thereto. Corn and cotton sold for several times as much, during those years, as in prior years.

The opinion contains the following:

"Conceding the lease to be void, the rule is that if the tenant goes into possession under the lease and holds under the lease the terms of the lease stipulating the amount of rent to be paid shall govern the rents the landlord is entitled to receive as well as the amount of rents the tenant is liable for.

Evans v. Winona Lumber Co. 16 N. W. 404; Laughran v. Smith, 75 N. Y. 205; Thurber v. Dwyer, 10 R. I. 355; Larkins v. Avery, 23 Conn. 304; Morrill v. Mackman, 24 Mich. 279."

The cases cited in no way sustain the proposition of law stated. It is the general rule that where the statutes of frauds require a lease to be in writing and an oral lease is made, which because of the statutes of frauds cannot be enforced, and possession is taken under the oral lease, the terms of the oral lease govern, except as to period of the renting. But no such rule applies as to a void lease made in violation of the prohibition of law. No such rule applies in the case of a lease made by a person who is a minor or incompetent or for any other reason not sui juris. In the case of an oral lease both parties are capable at the time of making a valid lease. If they had made a lease in writing it would be valid and enforcible. They had the right to contract. Oral contracts, where the statutes of frauds requires a writing, have never been regarded as void in the sense that they are prohibited by law.

At the time Eli Bunch made the lease in controversy the law prohibited him from making such a lease at all. It prohibited J. B. Cole from taking such a lease from him. This was not a case of two persons, both competent to contract, making an oral lease when the law required a writing, but it was the case of a lease made in writing which the law prohibited from being made at all.
158 The general rule is that where a contract is prohibited by law, none of its terms can be regarded for any purpose and where one of the persons making it is not sui juris, the other party can claim no rights from the fact that it was made.

It is held by the court in this case that a lease prohibited by law is void, but if the lessee gets possession, he need only pay the rent stipulated by the lease. A person therefore can take a ten year lease from a full-blood Cherokee Indian upon 160 acres of bottom land, worth $1,000.00 per year and contract to pay $10.00 at the end of the ten years or contract to pay $1.00 per year and if he gets posses-

sion of the land, he cannot be required to pay more. If this be the law, any person can safely take such leases and the effect of the holding is, to indirectly enforce the terms of the lease. The holding that any term of an illegal contract can be considered for any purpose, is contrary to the decided cases upon the question. The general rule is stated as follows:

"The contract is wholly void and incapable of ratification, and must be entirely ignored, in dealing with the business transactions between the parties, precisely as though no such writing had ever existed."

Gennert v. Westner, 31 Atl. 609 N. J.

To the same effect are, Day v. McAllister, 15 Gray 433, Winfield v. Dodge, 7 N. W. 906 Mich., State v. Ryan, 8 Atl. 293 N. J.

It was said by the Supreme Court of Wisconsin in a lease case:

"The written instrument offered in evidence, as we have said, was void. It was not competent to prove the contract by it. What, then, was the contract as to the payment of rent? This must be determined without regard to the terms of the written agreement. This logically follows from the fact that that agreement was void, and could not be resorted to to determine the contract of the parties."

Vinz v. Beatty, 21 N. W. 787.

Regarding the effect of a void lease the Supreme Court of Iowa in an opinion said:

"But something more than mere occupation of the premises would be necessary to the ratification of the lease. That might render the tenant liable under an implied promise for the quantum meruit, but not for the rent stipulated in the lease according to its terms."

McIntosh v. Lee, 10 N. W. 895.

159 We have not been able to find any case holding that the terms of a void lease, void because contrary to statute or public policy, can be considered for any purpose.

Further, the opinion in this case is squarely contrary to the opinion in the case of Mann v. Brady, XIV, A. P. C., 368, in which the final opinion was filed on March 8, 1921, and was written by Mr. Justice Miller. The case evidently had received the careful consideration of the Court, as two opinions were filed in the case. If the opinion in this case is right then the opinion in Mann v. Brady is wrong and ought to be overruled. The sole difference between the two cases is that in Mann v. Brady the contract considered was one for the sale of the restricted land of a full-blood Indian and the contract in this case is one for the leasing of the restricted land of a full-blood Indian. The opinion in that case is long, but the following extracts from the opinion are sufficient to show the difference between the doctrine in that case and the holding in this case:

"Referring to plaintiff's first contention: A contract made by a Creek Indian for the sale of his restricted land is void and cannot be

enforced. The policy of the government is to exercise a protecting control over the Indian and his lands, and any contract made in disregard of that policy which cannot be carried to full fruition because of such governmental protection, is void.

"Counsel cites other authorities along the same line as those above referred to, but these authorities are not applicable to the case before us. This was an entire and indivisible contract made in total disregard of the policy of the government of the United States in dealing with the Indians as wards of the government.

The government has taken the attitude of a guardian to protect the Indian in the possession of the lands allotted to him. This was done on the theory that the Indian was not the equal of the white man in handling business and financial affairs and that he would be the easy prey of the white man. This guardianship control is very much in the nature of a guardianship over a person who is a minor and incapable of handling his own financial and business affairs. This being the policy of the government, he who deals with the Indian and disregards that policy does so at his peril.

If the contract were between two parties of supposed equal mental attainment and business sagacity, where no law restricted them in their right to contract, except the law applicable to mankind, then a different rule of law would apply. But where an Indian
160 who is under guardianship control of the government and because of his lack of business sagacity the government establishes a policy of protecting him, a court of justice should be imbued with the full spirit of that policy and refuse its aid in the enforcement of a contract made in total disregard of such policy.

It would be folly to find a purchaser ready, able, and willing to buy the land of an Indian when the government had already decreed by its restrictions that the land could not be alienated. A contract, for a real estate agent's commission, made with an Indian, to find a purchaser to buy any part of his restricted lands, is in violation of the policy of the government in dealing with the Indians and cannot be enforced."

"Those contracts are unlawful which are: First, contrary to an express provision of law; second, contrary to the policy of express law, though not expressly prohibited." Section 972 of the Revised Laws of Oklahoma, 1910.

"By Act of Cong. June 28, 1898, c. 517 para. 29, 30 Stat. 507, it is provided: 'That all contracts looking to the sale or incumbrance in any way of the land of an allottee, except the sale heretofore provided, shall be null and void.' Lewis et al. v. Clements, 21 Okla. 167, 95 Pac. 769; Light v. Conover, 10 Okla. 732, 63 Pac. 966; Kelly v. Courter et al., 1 Okla. 277, 30 Pac. 372."

"That all contracts looking to the sale or incumbrance in any way of the land of an allottee, except the sale hereinbefore provided, shall be null and void." U. S. Statutes at Large, vol. 30, chap. 517, p. 507.

The case of Mandler v. Rains, 70 Oklahoma, 174 Pac. 240, is worthy of consideration:

'Where W., a full-blood Indian, makes a contract with M. wherein he agrees to pay M. all money in excess of a certain sum for which M. may sell his interest in an inherited allotment, and such contract is withheld from the knowledge of the county court who has jurisdiction to approve such sale under Act of Cong. May 27, 1908, c. 199, 35 Stat. 312, which contract had the effect, if not the purpose, of securing the approval of the county court to a conveyance for a less consideration than would have secured the approval of the court had it been aware of the contract, this would render such contract void as between the parties, and W. would have a right to recover any sums of money paid M. under said contract, whether paid voluntarily or otherwise. * * *

'In other words, the instruction told the jury that, if they should find that the contract was made in good faith with the sole and only purpose of compensating Mandler for his trouble in securing a purchaser of said land, then the jury could not find for the plaintiff for the sum sued for. We think the instruction was more favorable to the defendant than the facts under the circumstances warrant. To hold otherwise would merely nullify the act of Congress of May 27, 1908, c. 199, 35 Stat. 315, which is as follows: "That the death of any allottee of the Five Civilized Tribes, shall operate to remove all restrictions upon the alienation of the said allottee's land; provided, that no conveyance of any interest of any full-blood heir in such land shall be valid, unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.' This act of Congress was intended to protect the very class of persons among which the plaintiff is numbered, and, if it can be abrogated and set aside by an outside contract withheld from the knowledge of
161 the county court as in the instant case, then it is absolutely worthless and would merely be as a 'sounding cymbal of tinkling brass.' It is our opinion that if said contract was made, even though in good faith, and the knowledge thereof was withheld from the court in order to secure its approval of the conveyance which the court would not approve with full knowledge of said contract, such act was a fraud upon the court, and said contract would be void and of no effect. The jury having found that said contract was made for the fraudulent purpose of securing the approval of the county court to the conveyance, and to circumvent the county court in its efforts to have what it conceived to be a fair consideration paid for said interest, and the evidence in the case reasonably tending to support said finding, disposes of this proposition, as well as the other assignment of error urged, to the effect that even though said contract was void, the payment by Washington to Mandler, having been voluntarily made, could not be by him recovered. It is true that as a general proposition of law a party to an illegal contract cannot come into court and ask to be relieved therefrom. The parties being in pari delicto, the court leaves them where it finds them. However, there are well-settled exceptions to this rule: (1) Where public policy requires the intervention of the court; (2) where the parties are not

in pari delicto; (3) where the law which makes the agreement unlawful was intended for the special protection of the party seeking relief. 9 Cyc. 550.

'Although the parties are in pari delicto, yet the court may interfere and grant relief at the suit of one of them where public policy requires its intervention, even though the result may be that a benefit will be derived by a plaintiff who is in equal guilt with the defendant. Here the guilt of the parties is not considered as equal to the higher right of the public, and the guilty party to whom the relief is granted is simply the instrument by which the public is served. Thus it has been held that a grantor who has executed a deed pursuant to a lottery transaction may, in ejectment brought by him, set up the illegality of the conveyance, notwithstanding he is in pari delicto, as the statute for the suppression of lotteries, which declares such a conveyance void, can only be enforced by permitting the grantor to claim the invalidity of the transfer and obtain an annulment of the conveyance. Wooden v. Shotwell, 24 N. J. Law, 789.

'9 Cyc. p. 552, lays down the following rule: "Where One Party Is Protected by the Law.—The complaining party is especially protected by the law where the agreement is not illegal per se, but is merely prohibited, and the prohibition was intended for his protection, and in such case, not being in pari delicto, he is entitled to relief." Tootle v. Berkley, 57 Kan. 111, 45 Pac. 77; Mason v. McLeod, 57 Kan. 105, 45 Pac. 76, 41 L. R. A. 548, 57 Am. St. Rep. 327.

'In case of Smart v. White, 73 Me. 332, 40 Am. Rep. 356, the court discussed the right of a pensioner who had been assisted by the overseer of the poor of the town in securing her pension under an agreement that when she received the same the same should be applied on her indebtedness to the city for her support. She did receive it and turn it over to the overseer for the benefit of the city, then afterwards brought suit to recover this back. The court, in discussing her right to recover back the sum voluntarily paid, says: "But the plaintiff stands in a different attitude. If her pension was taken from her through a contract declared to be void by the
162 statute, she can have its restoration. She would be entitled to recover it back, even had she known the law, and a fortiori entitled, not knowing it. The parties do not stand in pari delicto. The penalty of the statute is leveled at him, and not at her. The punishment is to be inflicted upon the taker and not upon the giver. She is to be protected, not punished. Her ignorance of the law, or her folly, if not ignorant of it, is excusable; but his is not. He commits a wrong; she does not. She cannot defraud herself. The statute would be nullified by a different interpretation.'

'And so, in the instant case, to hold that because the money was paid by the plaintiff voluntarily to the defendant under a contract which had the effect, if not the purpose of securing the approval of the county court to a conveyance divesting plaintiff of his property for a less consideration than the court would have approved had it been aware of all the conditions surrounding the transaction, would defeat the very purpose of the law and render powerless the

court to afford the protection to this class of restricted Indians which under the law it was charged with this responsibility. It has been held by this court and the Supreme Court of the United States that the very purpose of section 9 of the act of May 27, 1908, was to prevent Indians from making improvident sales and to protect them against their own incompetency by providing that no conveyance of an interest in inherited lands by such full-blood Indians would be valid unless approved in accordance with such act. The contract in question between plaintiff and defendant affected plaintiff's interest in inherited land, and this interest could not be conveyed by the plaintiff without the approval of the county court; which court had been constituted a governmental agent for such purpose in such cases, and, where said contract so affecting such interest was withheld from the knowledge of such governmental agency as was done in the instant case, it would necessarily render said contract void as between the parties and give the plaintiff the right to recover any sums of money paid under said contract, whether paid voluntarily or otherwise. The record in this case discloses that the county court would not have approved the deed in question if it had been apprised of such contract, because it had refused to approve the conveyance for the identical consideration which the Indian was receiving in the instant case on the ground that the consideration was inadequate.

"We therefore, hold that said contract is void and of no effect. It necessarily follows that this cause should be in all things affirmed, and is so ordered." Mandler v. Rains, 70 Oklahoma, 174 Pac. 240.

"All contracts or agreements having for their object that which is repugnant to public justice, or violative of public policy, or offensive to good morals, or contrary to statutory provisions, or in derogation of the principles of the common law relating to the public peace or security, and injurious to the community, are void. * * *" Robertson v. Robinson, 65 Ala. 610, 39 Am. Rep. 17.

This court had under consideration a contract for the sale of restricted Indian lands in the case of Howard v. Farrer, 28 Okla. 490, 114 Pac. 695, in which the court held:

'By reason of Act. Cong. June 28, 1898, c. 517 sec. 29, 30 Stat., p. 507, and by Act. Cong. July 1, 1902 c. 1362, 32 Stat. p. 642, a sale by a full-blood Choctaw Indian to a white man of a portion of her allotment before the removal of restrictions upon her power to alienate and an agreement to convey same when her re-
163 strictions are removed is void; and notes executed by such Indian to the purchaser for the purpose of indemnifying him against loss in the event she fails to convey said land after her restrictions are removed are also void; and recovery thereon cannot be had although the purchaser paid the purchase price of the land at the time of the agreement of sale. * * *

"By one of these instructions the jury was told that if they should find from the testimony in the case that the notes sued upon

were contracts looking to sale of Indian land, and were made before the restrictions had been removed from same, in that event the notes were made in violation of the law and against public policy and therefore void; and the verdict should be in favor of defendants. * * *

"'All contracts or agreements having for their object that which is repugnant to public justice, or violative of public policy, or offensive to good morals, or contrary to statutory provisions, or in derogation of the principles of the common law relating to the public peace or security, and injurious to the community, are void. * * *'"

In conclusion it may be said that the opinion, as rendered, does great injustice to a returned soldier and upholds a transaction which ought to receive the condemnation of all patriotic persons. The opinion, as rendered, nullifies the acts of Congress relating to the leasing of lands of full-blood Indians.

A rehearing should be granted. Respectfully submitted.

NEFF & NEFF,
HARRY G. DAVIS,
Attorneys for Defendant in Error.

164 And thereafter, on June 28th, 1921, in the Supreme Court of Oklahoma, the following proceedings were had in said cause.

Supreme Court, June Term, 1921, June 28th, 1921, Seventh Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that defendant in error be granted 20 days to file brief on rehearing in the above cause and oral argument is hereby denied.

165 In the Supreme Court of the State of Oklahoma.

No. 11230.

J. B. COLE and T. B. MATTHEWS, Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

Brief in Support of Petition for Rehearing.

Filed in Supreme Court of Oklahoma Jul. 18, 1921. William M. Franklin, Clerk.

We have been given leave by this court to file a brief in support of a petition for rehearing. Upon examination of the original briefs and the cases cited in the petition for rehearing we find that the issues in the case are clearly presented and fully discussed, and we desire only to call the Court's attention to what we consider the controlling principle that should govern this case, and to discuss a few cases which we think support that principle.

It will be remembered that the plaintiff, Eli Bunch, is a full blood Creek Indian and that the land in controversy is his homestead and surplus allotment of eighty (80) acres, and that it is conceded by defendants that plaintiff was in actual military service of the United States during the years 1917 and 1918. It is further conceded that the leases executed by him and by his mother, as his purported agent, were null and void under the acts of Congress relative to the leasing of allotted land. This court in its opinion recognizes that said leases executed by the plaintiff to the defendant are void, but holds that since defendants went into possession of the land under the leases that the rental provided for in the leases fixes the amount of recovery to which the plaintiff is entitled and for which defendants are liable. In support of this holding the court cites the following cases——

166 Evans v. Winona Lumber Co., 16 N. W. 404;
Laughran v. Smith, 75 N. Y. 205;
Thurber v. Dwyer, 10 R. I. 355;
Larkins v. Avery, 23 Conn. 304;
Morrill v. Mackman, 24 Mich. 279.

We have no fault to find with the rule announced in those cases but we respectfully contend and insist that it has no application to a lease that is void because not authorized by the laws of the United States, but is prohibited because it is contrary to the public policy of the United States in the exercise of its guardianship and protecting care over full blood Indians who are recognized through all the decisions as a dependent people.

The rules of law that are applicable to white people as to contracts made by them governing their real estate are not applicable to full blood Indians. It has been repeatedly recognized by this court and by the Federal courts that no rights whatever can take root in a

grow out of contracts made by full blood Indians that are contrary either to an expressed statute or the public policy of the United States in dealing with these wards of the Government.

This and the Federal courts have held in many cases that a conveyance executed by an Indian before title rests in him is void and that the subsequent acquisition of title will not vest title in his grantee by estoppel. The general rule is that a conveyance with warranty estops the grantor to deny the grantee's title when he afterwards becomes the owner of the land assumed to be granted, does not apply to such cases. In the case of Starr vs. Long Jim, 227 U. S. 613, 33 S. Ct. 358, 57 U. S. (L. ed.) 670, the court said:

"As to the effect of the warranty upon the after-acquired title, while the general rule is that a conveyance with warranty estops the grantor, when he afterwards becomes the owner of the land assumed to be granted, to deny the grantee's title (Bigelow, Estoppel, 2d ed. p. 324, etc.), it is well settled that the doctrine does not apply to the case of a conveyance made by one non sui juris, or that is contrary to public policy or statutory prohibition. Bank of America v. Banks, 101 U. S. 240, 247, 25 L. ed. 850, 853; Doe ex dem. Chandler v. Ford, 3 Ad. & El. 649, 5 Nev. & M. 209, 1 H. & W. 378, 5 L. J. K. B. N. S. 25; Den ex dem. Wooden v. Shotwell, 24 N. J. L. 789; Connor v. McMurray, 2 Allen, 202, 204; Doyle v. Coburn, 6 Allen, 71, 72;
167 Me-am v. Boston, C. & F. R. Co. 1- Mass. 241, 244; Brick v. Campbell, 122 N. Y. 337, 346, 10 L. R. A. 259, 25 N. E. 493; Kennedy v. M'Cartney, 4 Port. (Ala.) 141, 158.

"Since it is entirely plain, in the case before us, that the title to the lands in question was retained by the United States for reasons of public policy, and in order to protect the Indians against their own improvidence, it follows as matter of course that a conveyance made by one of them, before the title was vested in him pursuant to the act of 1905, was in the very teeth of the policy of the law, and could not operate as a conveyance, either by its primary force or by the way of estoppel."

See also Mullins v. Simmons, 234 U. S. 192, 34 S. Ct. 857, 58 U. S. (L. ed.) 1274; Briggs v. Sample, 43 Fed. 102, 10 L. R. A. 132; Whitmire v. Levine — Oklahoma —, 193 Pac. 884.

This principle is further illustrated by the case of Murrow Indian Orphans Home v. McClendon, 166 Pac. 1101, and Cravens et al. v. Amos et al. — Oklahoma —, 166 Pac. 140. In the former case it was held that the champarty statutes of this state have no application to conveyances made by restricted Indian, and no state statute can be set up to impair or restrict the rights granted or protected by Federal laws. The reasons upon which this salutary rule is based is ably stated by this court in the opinion delivered by Mr. Justice Brett, as follows:

"The purpose of Congress in placing the restrictions upon the Indian's land was to put the title where the Indian could not interfere with it, or divest himself of it, and to insure that it would remain in him, under the control of Congress and the constituted authorities. But if our statute on champerty applies to these lands, then that pur-

pose has, in a large measure, failed. For then the Indian can put some one in possession under a void deed, as in the case at bar, and then when Congress removes his restrictions, and turns over to him what it intended should be an untainted title, this statute confronts him, and says, Any deed you make is, as against the one in possession, void until you go into court and remove this cloud that you have placed upon your title, and regain the possession that you parted with, through profligance and a void deed. Congress never contemplated that the courts, or any one else, would have to be called to its assistance to enable the owner of these restricted lands to convey by perfect title, when restrictions were removed.

168 "What other purpose could Congress have had in placing the restrictions upon these lands, except to protect the Indian against his own acts? and if our champerty statute applies to these lands, then we repeat that the purpose of Congress has, in a large measure, failed. For upon the removal of restrictions, instead of having the clear and perfect title that Congress intended to preserve for him, he only has a title that he may clear up through the courts, before he can convey anything, as against the one in possession, under a void deed, made in contravention of the act of Congress, and which unless aided by our champerty statute, would be nothing more than a scrap of waste paper. We know that Congress reserved the right to control these lands, and to enact the laws affecting their conveyance. And our Legislature has never, by a single act, attempted to divest Congress of this control. And this champerty statute has no application, and was intended to have no application, to the restricted lands of an Indian. And the holding in Miller v. Fryer, et — Okl. 145, 128 Pac. 713, Ruby v. Nunn, 37 Okl. 389, 132 Pac. 128, and Okl. Trust Co. v. Stein et al., 39 Okl. 756, 136 Pac. 746, that this statute does apply to the restricted lands of an Indian is expressly overruled."

169 In Cravens et al. v Amos et al., supra, this court had before it for consideration and decision the applicability of the Occupying Claimants' article of Code of Civil Procedure, Chapter 60, Art. 15, Revised Laws 1910, 4933-4939, providing for compensation for valuable and permanent improvements made and taxes paid by an occupying claimant, and held that such provision was not enforceable against the owners of the land who were full blood Indian heirs of the allottee, and who under Federal laws were not authorized to convey their interest therein without the approval of the court having jurisdiction of the settlement of the estate of the deceased allottee. The court in an opinion by Mr. Justice Miley among other things said——

"We do not believe that any construction can be given the Occupying Claimants article which would give it any force or effect without in effect nullifying the restrictions imposed by Congress on the land. The acts of Congress on the subject are, of course, paramount, and conflicting statutes must give way."

In the case of Walker et al. v. Brown, 141 Pac. 681, this court in an opinion by Mr. Justice Kane made the following pertinent observation relative to the policy of the National Congress—

"This court has repeatedly held that acts of Congress supplant the laws of Oklahoma in relation to Indians; that certain state laws which are applicable to every other citizen are not in force as against or pertaining to the Indians of the Five Civilized Tribes, and that we have here, respecting some matters, two classes of citizens and two legislative sovereignties. Jefferson v. Winkler, 26 Okl. 653, 110 Pac. 755; Kirkpatrick v. Burgess, 29 Okl. 121, 116 Pac. 764; Wilson v. Morton et al., 29 Okl. 745, 119 Pac. 213. The Congress in the exercise of this power has undertaken to legislate for the Indians along lines which it deems will subserve their best interests, and it is not within the province of the court to inquire whether it performs this duty well or ill."

Now applying the principle enunciated by the above cases which are illustrative of the vast number of cases announcing the same principle of law, it is apparent that one of the primary considerations in determining the rights of restricted Indian allottees is to ascertain the Federal law or policy and then to give it full
170 force and effect. As has been stated in effect in some of the above cases the courts are not authorized to give such construction to the acts of Congress or to apply state statutes or rules of law applicable to others than the class of citizens protected by the Federal Government, for by doing so would permit an indirect accomplishment of that which is prohibited to be done directly. Now in the instant case it is conceded that under the acts of Congress and the policy of the Federal Government relative to restricted full blood Indians, such as the complainant in this case, that the leases herein involved are absolutely void and contrary to the policy of the Federal Government. The object sought to be accomplished by the lessee was to cultivate complainant's land for profit and to secure possession thereof for such purpose. The National Congress has put its seal of disapproval upon such transactions, and to permit a lessee who has secured possession pursuant to a *voild* lease such lease being taken and possession held contrary to the public policy of the government, and to have their liability fixed by the terms of the lease, certainly permits such lessees to circumvent the law and to do indirectly what is expressly prohibited. If the rule announced by this court is permitted to stand all that a designing person needs to do to avoid and circumvent *rhw* policy of the Federal Government and to impose upon one of its wards is to induce him to execute a void lease, secure possession thereunder, and only be liable for the rental stipulated in the void contract. If let into possession under such a void lease the lessee is permitted to derive the benefits that he would have if the lease had been valid, and it seems to us that this would complete frustrate governmental policy. Otherwise the lessee could take a void lease upon valuable agricultural land, stipulate in the lease that he was only to pay a nominal consideration for the use of the premises and then when sued for the fair rental value, or the actual rents received by him, could set up the stipulation as to the amount of rent in his void lease as the measure of his liability. This would certainly give him a valuable

right and protection based upon a void instrument secured contrary to the public policy of the National Government.

171 We are not aware of any case that holds that those dealing with these deponent wards of the National Government secure any rights whatever from an instrument taken in direct violation of an expressed statutory provision or its public policy. In the case of Apple et al. v. Westheimer & Daube, 155 Pac. 623, the contention was made by certain defendants holding under a void lease that by reason of their actual possession at the time plaintiff purchased land that they had certain "rights and equities." In denying this contention this court said—

"In a case of this kind, under the facts, such argument is not only inconsistent, but has neither length or breadth. Of the many phases of Indian lease questions decided by this court, not one can be found supporting defendants' view. Defendants' possession, right, and equities, as they designate them, in order to be such in fact, must depend on some prior, lawful, actual, contractual relations, or at least grow out of some act or relation not unlawful; otherwise, by circumvention, an object could be accomplished by indirection which could not be accomplished by direction. One could be guilty of the most flagrant violation of the inhibition imposed in reference to leasing full-blood Indian lands, and by artifice accomplish just what Congress intended to forbid. Whatever may be the application of the principle for which counsel contend as applied to other and not full-blood Indian leases, as herein, is not necessary for decision; but we feel firmly such a position here is untenable. When called to account, defendants cannot love another for the purpose of escaping the penalty of law, and at the same time divorce themselves from the union they have voluntarily entered, enjoyed, and maintained, and in this connection there is no question but what the plaintiffs may assail the invalidity of the lease on which defendants must win or lose."

We have been unable to find and do not think there are any cases directly in point, that is which determine the measure of damages for which the wrongful occupant of land is liable who comes into possession under a void Indian lease. But we do not think there is any case holding that such tenant is liable only for the amount of the rent specified in the void lease, but we are firmly convinced that the rule announced by this court in its opinion is not and should not be applicable to contracts taken by designing persons contrary to the law and public policy. For the reasons stated we respectfully ask this court to grant the plaintiff,

172 defendant in error, a new hearing.

Respectfully Submitted,

NEFF & NEFF,
RAINEY & FLYNN,
Attorneys for Defendant in Error.

173 And thereafter, on July 26th, 1921, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, June Term, 1921, July 26th, 1921, Eleventh Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that plaintiff in error be requested to file response to petition for rehearing within 10 days, in the above cause.

174 And thereafter, on July 30, 1921, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court Proceedings.

11230.

J. B. COLE et al., Plaintiff in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this July 30 1921 it is ordered by the court that plaintiff in error be given until Sept. 5 1921 to file response to petition for rehearing in the above cause.

175 And thereafter, on February 7th 1922, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, December Term, 1921, February 7th, 1922, Tenth Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

176 And thereafter, on February 14th 1922, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, February Term, 1922, February 14th, 1922, First Judicial Day.

11230.

J. B. COLE et al., Plaintiffs in Error,

vs.

ELI BUNCH, Defendant in Error.

And now on this day it is ordered by the court that the mandate be stayed in the above cause pending application for appeal to the United States Supreme Court.

177 *Certificate.*

In the Supreme Court of the State of Oklahoma.

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 176 pages, numbered from 1 to 176 inclusive, is a true and complete transcript of the record and all proceedings in said Supreme Court in the case of J. B. Cole, et al., plaintiffs in error, vs. Eli Bunch, Defendant in error, No. 11230, as the same remains upon the files and records of said Supreme Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 28th day of March, A. D. 1922.

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By REUEL HASKELL, JR.,
Assistant.

Endorsed on cover: File No. 28,827. Oklahoma Supreme Court. Term No. 872. Eli Bunch, plaintiff in error, vs. J. B. Cole and T. B. Mathews. Filed April 12th, 1922. File No. 28,827.